

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

-vs-

10-CV-569A

MARK ELLIOTT ZUCKERBERG and
FACEBOOK, INC.,

Defendants.

Proceedings held before the
Honorable Leslie G. Foschio, U.S.
Courthouse, 68 Court Street, Buffalo,
New York on June 30, 2011.

APPEARANCES:

JEFFREY ALAN LAKE, ESQ.,
Appearing for Plaintiff.

ORIN S. SNYDER, ESQ.,
MATTHEW BENJAMIN, ESQ.,
TERRANCE P. FLYNN, ESQ.,
Appearing for Defendants.

AUDIO RECORDER: Sandra Wilson

TRANSCRIBER: Michelle L. McLaughlin, RPR,
Official Reporter,
U.S.D.C. W.D.N.Y.
716/332-3560

(Proceedings recorded by electronic sound
recording, transcript produced by computer.)

1 THE CLERK: On the record. Ceglia versus
2 Zuckerberg and Facebook. Appearing for the
3 plaintiff is Jeffrey Lake and appearing for the
4 defendants are Orin Snyder, Matthew Benjamin and
5 Terrence Flynn. We're here for oral argument on
6 the parties' motions for expedited discovery and
7 also a scheduling conference.

8 THE COURT: Good afternoon. You are
9 Mr. Lake?

10 MR. LAKE: Yes, your Honor. Good
11 afternoon.

12 THE COURT: Welcome to our court.

13 MR. LAKE: Thank you very much.

14 THE COURT: Mr. Snyder.

15 MR. SNYDER: Good afternoon, your Honor.

16 THE COURT: That's first chair,
17 Mr. Benjamin and what's your name again? By the
18 way, with all these changes of counsel, we can only
19 hope and assume that there won't be anything
20 affecting Mr. Flynn, because we are always
21 interested in making sure that our former U.S.
22 attorneys are gainfully employed.

23 MR. FLYNN: Thank you, your Honor.

24 THE COURT: All right. We've got the
25 motions. We know what they say. We've read them.

1 Very intriguing to say the least.

2 And we're ready to hear from Mr. Snyder, and
3 then we'll hear from Mr. Lake, and we'll ask
4 questions along the way.

5 I guess I would want to emphasize that any
6 questions I may ask are not intended to indicate
7 the Court's views on the merits. Obviously this is
8 a very significant case, subject to the defendant's
9 views about the authenticity of the underlying
10 agreement. Rather, the questions are intended to
11 assist me in understanding, if I can use the term,
12 the big picture, so that I can make an informed and
13 reasonable decision on, first of all, the question
14 of whether these motions should be granted at all,
15 or need to be granted, and if so, in what form, and
16 to then inform the Court about how to handle the
17 case as we go forward to the extent that we need to
18 go forward.

19 Then, of course, I fully understand the two
20 questions are totally intermixed, especially in the
21 defendant's view. So just bear with me with my
22 questions and understand that I'm not trying to in
23 any way second guess any of your theories or
24 arguments, but I'm just trying to understand better
25 what we're trying to accomplish.

1 So, Mr. Snyder, you have the floor for the
2 moment.

3 MR. SNYDER: Thank you, your Honor. May I
4 approach, your Honor?

5 THE COURT: Oh, that's the other thing.
6 If you prefer to be seated and at counsel table for
7 whatever reason, you're welcome to do it. If you
8 prefer to stand and deliver, use the podium.

9 MR. SNYDER: Thank you. Good afternoon,
10 your Honor.

11 THE COURT: Good afternoon.

12 MR. SNYDER: Your Honor, our motion
13 presents overwhelming evidence that this plaintiff
14 is committing what we believe is an unmitigated
15 fraud on this court which strikes at the heart of
16 the integrity of the judicial process and this
17 court's processes. We seek expedited discovery to
18 fully expose the nature and magnitude of the fraud,
19 although we believe our papers have gone way beyond
20 the requisite showing of prima facie evidence of
21 fraud to establish an overwhelming case of fraud.

22 I think the case begins, your Honor, to give
23 the Court background, this plaintiff waited seven
24 years to file a lawsuit claiming a multi-billion
25 dollar interest in one of the most well-known

1 companies in the world. There are statute of
2 limitation and laches problems which affect the
3 case, but we believe the case can and should end
4 before those issues even need to be resolved.

5 This case is based on a fraudulent contract and
6 fabricated emails. The case --

7 THE COURT: Fraudulent in the sense that
8 it's nonexistent?

9 MR. SNYDER: The contract attached to the
10 complaint and the amended complaint is a doctored,
11 fraudulent document which this plaintiff, perhaps
12 in concert with others, manufactured for the
13 purpose of bringing this lawsuit.

14 THE COURT: That's one thing I'm not quite
15 clear on, and I may have missed something in the
16 papers. Is it Mr. Zuckerberg's position that he
17 never signed anything?

18 MR. SNYDER: No, your Honor.
19 Mr. Zuckerberg did sign --

20 THE COURT: Could I finish the question?

21 MR. SNYDER: I'm sorry. Yes, your Honor,
22 of course.

23 THE COURT: Anything in any written
24 instrument that carried both his signature and
25 Mr. Ceglia's, the plaintiff?

1 MR. SNYDER: As Mr. Zuckerberg attested to
2 in his declaration, your Honor, he did sign a
3 contract with this plaintiff in 2003 before
4 Facebook was even a figment of his imagination,
5 much less a concept or a company, concerning an
6 entity known as StreetFax. StreetFax was a failing
7 and ultimately failed company that this plaintiff
8 tried to get off the ground. Mr. Zuckerberg, who
9 was a freshman at Harvard looking for extra income,
10 answered an ad on Craigslist and performed limited
11 computer services.

12 THE COURT: Such as?

13 MR. SNYDER: Such as coding, programming
14 work. Mostly coding, creating software for this
15 system, StreetFax, which had to do with taking
16 pictures of street intersections and --

17 THE COURT: What did Mr. Ceglia contribute
18 to that project?

19 MR. SNYDER: The StreetFax project?

20 THE COURT: Yes.

21 MR. SNYDER: It was ironically, your
22 Honor, and I say this not to -- to cast aspersions,
23 but Mr. Ceglia ironically started StreetFax --

24 THE COURT: But you wouldn't mind if it
25 did consistent with your --

1 MR. SNYDER: Well, it's the record, your
2 Honor.

3 THE COURT: -- published position.

4 MR. SNYDER: Well, the facts compel this
5 comment, your Honor. StreetFax ironically was
6 borne out of Mr. Ceglia's theft of that company
7 from people for whom he worked.

8 THE COURT: Is that in the record
9 anywhere?

10 MR. SNYDER: It's in the public record.

11 THE COURT: I mean, in the papers that are
12 before me? I don't remember reading that.

13 MR. SNYDER: I don't believe so, your
14 Honor.

15 THE COURT: So this is new information to
16 me?

17 MR. SNYDER: New information, but there
18 was a litigated --

19 THE COURT: He somehow stole StreetFax?

20 MR. SNYDER: Yes, and there was a
21 litigation in Boston federal court where the
22 founders of a predecessor entity sued him, and
23 there ultimately was a settlement out of which
24 Mr. Ceglia obtained the right to use the StreetFax
25 name. It was his -- so it wasn't even his idea.

1 It was a company that he used to work for that had
2 the exact same identical idea and concept. So
3 Mr. Zuckerberg did, in fact --

4 THE COURT: Same identical idea and
5 concept as?

6 MR. SNYDER: Taking photographs of street
7 intersections and uploading them on the Internet.

8 THE COURT: That's the project that he
9 engaged with Mr. Zuckerberg about?

10 MR. SNYDER: Yes, your Honor. So
11 Mr. Zuckerberg for a period of months performed
12 limited services --

13 THE COURT: So what was Mr. Ceglia's role
14 in this project, this coding programming software?

15 MR. SNYDER: As best as we can understand
16 from the limited information we have, he was
17 running the company. He was looking for customers,
18 trying to find financing, and the kind of things
19 that one does trying to get a fledgling startup
20 company --

21 THE COURT: Did he give Mr. Zuckerberg the
22 specifications for the software that he was
23 attempting to write or build for this street
24 intersection identification program?

25 MR. SNYDER: Yes, your Honor. They had

1 conversations about the project, and
2 Mr. Zuckerberg, who, even at that time, was a
3 proficient software developer and coder, was able
4 to develop software code to enable that system to
5 operate. Ironically, Mr. Ceglia did not pay
6 Mr. Zuckerberg for the work performed.

7 THE COURT: I see all of that -- those
8 allegations in there.

9 MR. SNYDER: Sure.

10 THE COURT: But he did receive some money?

11 MR. SNYDER: A modest sum of money but --

12 THE COURT: How much?

13 MR. SNYDER: I believe he was paid in
14 total about in \$9,000 and was owed --

15 THE COURT: 9,000?

16 MR. SNYDER: -- more than that, and --

17 THE COURT: Not exactly modest to a
18 college student.

19 MR. SNYDER: It wasn't, but he did a
20 considerable amount of work.

21 THE COURT: I'm sure.

22 MR. SNYDER: So he --

23 THE COURT: He was a proficient coder too.

24 MR. SNYDER: At the time he was, even at
25 the time he was.

1 THE COURT: Received no training,
2 self-taught?

3 MR. SNYDER: Self-taught, but also took
4 computer courses in high school and in college.

5 THE COURT: Okay. Which Mr. Ceglia, he
6 had no competence in that regard, that technical
7 way?

8 MR. SNYDER: To the extent we're
9 knowledgeable of his technical skills, they were
10 limited, and he certainly needed to engage an
11 independent contractor to perform those services
12 for him. But what's clear is that that project had
13 absolutely nothing to do with anything related to
14 Facebook, a social media network, or any related
15 concepts.

16 And -- and, your Honor, the emails which we've
17 told your Honor about which exist today on the
18 Harvard University server, 176 of them actually,
19 all tell a narrative of a relationship between
20 Mr. Zuckerberg on the one hand and StreetFax and
21 Mr. Ceglia on the other that relates only entirely
22 exclusively to StreetFax.

23 THE COURT: And they in no way corroborate
24 or are consistent with those emails that are
25 purportedly genuine emails between the plaintiff

1 and Mr. Zuckerberg that are attached to the
2 complaint?

3 MR. SNYDER: Correct, your Honor. In
4 fact, they tell a narrative that, when read
5 side-by-side with the fictional narrative told in
6 the amended complaint, make the narrative in the
7 amended complaint not only fantastical, but almost
8 impossible as a matter of logic and reason, because
9 at the same time that the authentic emails that
10 reside today on the Harvard server and date
11 from 2004 indicate a deadbeat Mr. Ceglia unable to
12 pay Mr. Zuckerberg, begging for forbearance,
13 begging for forgiveness --

14 THE COURT: That's in the --

15 MR. SNYDER: Right.

16 THE COURT: I see those.

17 MR. SNYDER: The Court --

18 THE COURT: Are your -- do the emails that
19 are in your papers, are those all the emails?

20 MR. SNYDER: Those are three, your Honor.

21 THE COURT: Those are the three.

22 MR. SNYDER: The reason we only attached
23 three is interesting, your Honor. We believe that
24 if we attached all of them, it would just provide
25 this plaintiff with a roadmap for how to even

1 better try to perfect his fraud as he goes forward.

2 THE COURT: That's why you're opposed to
3 mutual discovery in the sense of at least allowing
4 the plaintiff to obtain discovery contemporaneous
5 or in advance potentially of yours?

6 MR. SNYDER: Yes. We're prepared to give
7 this plaintiff 176 emails that document --

8 THE COURT: 176?

9 MR. SNYDER: -- that document a narrative,
10 the true relationship between these parties, but
11 not until, your Honor, he provides us with his
12 supposed evidence --

13 THE COURT: I understand. Okay.

14 MR. SNYDER: Right.

15 THE COURT: I just needed to -- and how
16 many are there all together? You said --

17 MR. SNYDER: 176, your Honor.

18 THE COURT: Over what period?

19 MR. SNYDER: This is from middle of 2003
20 through and including the middle of 2004 when
21 Mr. Zuckerberg gave up on ever receiving a dime
22 from this man.

23 THE COURT: More than the 9,000 that he
24 received?

25 MR. SNYDER: Correct.

1 THE COURT: And did Mr. Zuckerberg
2 actually deliver some software, code or --

3 MR. SNYDER: Code that --

4 THE COURT: -- otherwise?

5 MR. SNYDER: Yes, code that Mr. Ceglia and
6 his co-workers deemed and described as beautiful
7 and very effective and exactly what they had wanted
8 and ordered. So --

9 THE COURT: And then after that nothing
10 happened between the two parties until
11 Mr. Zuckerberg was served in this action?

12 MR. SNYDER: Right. Until out of the blue
13 in June of last year this complaint fell from the
14 sky alleging the existence of a contract which
15 Mr. Zuckerberg has sworn to this Court and --

16 THE COURT: Well, it didn't fall from the
17 sky. It was served on Mr. Zuckerberg.

18 MR. SNYDER: As if it fell from the sky.

19 THE COURT: As if it fell from the sky.
20 Mr. Ceglia never wrote or corresponded with
21 Mr. Zuckerberg to say consistent with the
22 complaint, you know, in case you've forgotten,
23 we're partners --

24 MR. SNYDER: No, your Honor.

25 THE COURT: -- in Facebook and where's my

1 office, and could you order some furniture, and
2 when am I going to get an accounting and 50 percent
3 of the profits for the last fiscal year, nothing
4 like that?

5 MR. SNYDER: No. Despite the fact by
6 early 2010 Facebook had close to 400 or 500 million
7 customers or users, Mr. Ceglia remained silent
8 sitting on his alleged multi-billion dollar
9 interest. And it's our belief that it wasn't until
10 shortly before Mr. Argentieri filed the complaint
11 on behalf of Mr. Ceglia in the state court, it was
12 shortly at or around that time that he concocted
13 this entire fraud. And the amended -- the original
14 complaint was bad enough because it attached what
15 was a fraudulent document, and what --

16 THE COURT: Which one was that?

17 MR. SNYDER: The complaint. The contract.
18 The contract.

19 THE COURT: Well, the amended complaint
20 also attaches --

21 MR. SNYDER: I'm sorry, the original
22 complaint was bad enough. But when we made
23 clear --

24 THE COURT: Bad enough in the sense of?

25 MR. SNYDER: Of based on an outright

1 pervasive fraud. In other words --

2 THE COURT: Was it more pervasive than the
3 amended complaint?

4 MR. SNYDER: The amended complaint doubles
5 down on the fraud.

6 THE COURT: Oh.

7 MR. SNYDER: And it does so --

8 THE COURT: So it's worse?

9 MR. SNYDER: It's worse. And it does so,
10 your Honor, because after the filing of the
11 original complaint, Facebook made clear publicly
12 that it was going to vigorously fight this lawsuit
13 and that it regarded that document as a fraud, i.e.
14 it was not going to succumb or acquiesce to a
15 opportunistic and bogus lawsuit.

16 And so when the amended complaint was filed for
17 the very first time it alleges the existence, of
18 course, of several dozen emails between
19 Mr. Zuckerberg and the plaintiff purportedly
20 concerning Facebook. The emails, of course, were
21 not attached to the amended complaint. People call
22 them emails, but they were really words printed on
23 a document captioned amended complaint. The emails
24 are outright fabrications.

25 Mr. Zuckerberg has submitted a sworn

1 declaration to this Court that he did not write or
2 receive a single one of those so-called emails.

3 THE COURT: And they're not among the --
4 what's in the Harvard server.

5 MR. SNYDER: Correct. The foremost
6 computer forensic experts in the country, the
7 Department of Justice and other government entities
8 rely on Stroz Friedberg, although it's a private
9 company, often for their forensic computer skills,
10 have confirmed that these made-up emails do not
11 exist, do not reside --

12 THE COURT: And that they are made up?

13 MR. SNYDER: And --

14 THE COURT: And that they are made up,
15 fabricated?

16 MR. SNYDER: The linguistic expert has
17 compared the text and tone of the supposed emails
18 described in the amended complaint to
19 Mr. Zuckerberg's authentic voice in the genuine
20 emails and has corroborated Mr. Zuckerberg's sworn
21 testimony that he did not send or receive any of
22 those emails.

23 THE COURT: In his opinion.

24 MR. SNYDER: In his opinion. What makes
25 this even more disturbing is the changing story

1 about where these emails actually -- so-called
2 emails exist. Mr. Ceglia told the press in an
3 article we cite in our papers, the Wellsville
4 Daily, that the computers that the emails were on
5 were at his parents' house.

6 THE COURT: I saw that.

7 MR. SNYDER: And now we know why he didn't
8 attach those emails to his complaint, because his
9 story has now changed, and he no longer has emails.
10 What he has, your Honor, are word documents into
11 which he supposedly cut and paste emails, and these
12 documents are not on a computer at his parents'
13 house or apparently on the other computer, but
14 reside on a floppy disk.

15 THE COURT: Where is that located again?

16 MR. SNYDER: We believe it's now in the
17 custody of one of his experts.

18 THE COURT: So we won't be needing to
19 seize the computer that's allegedly located in the
20 parents' home?

21 MR. SNYDER: We do, your Honor, because we
22 believe that may be an instrument --

23 THE COURT: Still?

24 MR. SNYDER: -- of the fraud. Yes, your
25 Honor.

1 THE COURT: There may still be things in
2 there that your forensic people can reconstruct and
3 analyze?

4 MR. SNYDER: Yes. Including, your Honor,
5 interestingly an important piece of forensic
6 evidence that has been used by prosecutors and
7 civil litigants alike, and you actually see it in
8 the Casey Anthony case now which is in the public
9 eye.

10 THE COURT: The who case?

11 MR. SNYDER: The Casey Anthony, that's
12 that mother who is alleged to have killed her
13 child.

14 THE COURT: Oh, sad case.

15 MR. SNYDER: Yes, very. Is search -- Web
16 searches conducted by defendants and wrongdoers --
17 and we believe Mr. Ceglia's a wrongdoer here --
18 often reveal and expose the wrongdoing, meaning to
19 say it may well be that Mr. Ceglia at or around the
20 time that was hatching this fraud in or around June
21 of 2010, was searching the Internet, maybe on a
22 computer he has in his possession, custody or
23 control if he hasn't destroyed or disposed of those
24 or at his parents' house, for information, how-to
25 material for doctoring contracts, for backdating

1 emails --

2 THE COURT: The Web site that shows you
3 how to do airshots emails.

4 MR. SNYDER: Correct. Correct.

5 THE COURT: That's the kind of thing might
6 be revealed if you could search the parents'
7 computer?

8 MR. SNYDER: Or whatever computer he used
9 at or around time we believe the fraud was -- was
10 being hatched, including, for example, email
11 searches about the history of Facebook and
12 chronology, so that when he was fabricating his
13 amended complaint more recently, he was doing it,
14 to the extent he could, consistent with external
15 facts that might make his narrative more plausible.

16 Now, if you read his opposition papers --

17 THE COURT: I have.

18 MR. SNYDER: If one reads his opposition
19 papers. Of course, you have, your Honor. The
20 hand-selected polygraph examiner who is supposed to
21 somehow rehabilitate or give credibility to this
22 plaintiff only created more red flags, because it's
23 telling that this polygrapher either didn't ask
24 Mr. Ceglia about these fake emails, because there's
25 no information in there about the fake emails, or

1 he did ask and he failed that part of the test,
2 meaning he couldn't --

3 THE COURT: There's a suggestion that his
4 counsel may have told the examiner not to ask that
5 question?

6 MR. SNYDER: Correct.

7 THE COURT: Do you have any basis for that
8 assertion?

9 MR. SNYDER: Well, we had --

10 THE COURT: That's a pretty serious
11 assertion.

12 MR. SNYDER: I don't know -- I think it's
13 a very --

14 THE COURT: You did say that.

15 MR. SNYDER: It's a very fair inference,
16 your Honor --

17 THE COURT: No, no, you said that. You
18 speculated that plaintiff's counsel may have
19 directed the polygraph examiner not to ask
20 questions about the emails.

21 MR. SNYDER: Or --

22 THE COURT: Do you have any basis for
23 that?

24 MR. SNYDER: I don't, your Honor. I think
25 it's a fair inference that either the polygrapher

1 was instructed not to ask the question, or he asked
2 the question and was given an answer which was a
3 failing answer, because if the purpose of the
4 polygrapher was to give credibility to the
5 plaintiff's story, and fundamental to that story
6 was the email part of the story, it makes no sense
7 that the polygrapher wouldn't ask those questions
8 and get -- and get answers. But back to the fraud
9 that started the case, which is the bogus
10 contract --

11 THE COURT: How do you think -- why would
12 you think the polygraph operator would have known
13 about the emails?

14 MR. SNYDER: Well, certainly the polygraph
15 examiner was working with counsel and with the
16 plaintiff for the purpose of preparing that
17 submission. And so he either was instructed or not
18 instructed to ask about the emails, which is a
19 central part of this case. And either way I
20 think --

21 THE COURT: You think the emails are a
22 central part of the case?

23 MR. SNYDER: They're central to the extent
24 that they confirm the fraud, meaning to say that
25 the emails are additional confirmation that this

1 plaintiff is perpetuating the most serious kind of
2 fraud on the court imaginable.

3 THE COURT: And when the polygraph
4 examination was conducted, plaintiff's counsel was
5 aware that that was your position?

6 MR. SNYDER: Fully aware. We'd already
7 submitted --

8 THE COURT: How would they have seen that,
9 through this motion?

10 MR. SNYDER: Yes. On June 2nd we
11 submitted our motion.

12 THE COURT: When was the polygraph exam
13 again, I forgot?

14 MR. SNYDER: Between June 2nd and June
15 10th.

16 THE COURT: Thank you.

17 MR. SNYDER: We hired, your Honor,
18 Professor Romano, Frank Romano from Rochester
19 Institute of Technology, who is considered, if not
20 the world renowned expert in document examination,
21 at the very top of -- of that industry. Again,
22 hired by the United States Department of Justice --

23 THE COURT: I read his credentials.

24 MR. SNYDER: His report is also
25 devastating, because he concludes without even

1 inspecting the original and conducting the testing
2 that we think is so important to confirm and fully
3 expose the fraud, he concludes based on the copy
4 that this is amateurish forgery, and your Honor has
5 read, of course, so I won't repeat the actual
6 factual findings that --

7 THE COURT: And, of course, they have an
8 expert who I thought rather neatly rebutted that.

9 MR. SNYDER: I don't think so, your Honor.

10 THE COURT: You don't think so?

11 MR. SNYDER: I thought the expert was
12 hedgy.

13 THE COURT: Well, he attempted to neatly
14 rebut it.

15 MR. SNYDER: I thought he hedged, was
16 equivocal, and actually did not come out and say
17 that the document was authenticate. All he said is
18 that page 1 sits on page 2, and there are
19 indentations on page 2 from page 1 which, of
20 course, could and we believe was done at or around
21 the time the forgery occurred many, many years
22 after this relationship ended.

23 But, as your Honor saw, when the plaintiff
24 doctored page 1 of the contract to manufacture the
25 contract for this lawsuit, he made a mistake that

1 we believe also exposed his fraud with the LLC.
2 And they make short shrift of that, but the fact
3 that page one says StreetFax, LLC, page 2 says
4 StreetFax, Inc.

5 THE COURT: I don't want to quibble too
6 much, and I have read all of this, so -- but I
7 thought there was a plausible explanation for that.
8 He just assumed it was a corporation and being a
9 layperson put down LLC according to the plaintiff.

10 MR. SNYDER: That would make sense, your
11 Honor, if page 2 also said StreetFax, LLC. But it
12 didn't. Page 2 of the contract said StreetFax,
13 Inc.

14 THE COURT: We're talking about a layman
15 who put together a, basically, a kitchen-table
16 contract to his potential advantage or
17 disadvantage, and didn't consult a lawyer, if it is
18 an authentic contract and -- but coming back to the
19 point, Mr. Zuckerberg does agree that he signed
20 some sort of an instrument with Mr. Ceglia. We
21 sort have got away from that.

22 MR. SNYDER: Yes, and that's what makes
23 the fraud so pernicious, because he is using --

24 THE COURT: Where is that contract?

25 MR. SNYDER: I think Mr. Argentieri, lead

1 counsel, who is not present, but he's lead counsel,
2 has it allegedly, according to reports. We've been
3 asking to see it for a year.

4 THE COURT: So you think there's two
5 instruments? There's the original which is the
6 real contract between Mr. Zuckerberg and Mr. Ceglia
7 relative to Street Search that's in the safe
8 deposit box, and what was attached to the complaint
9 is this concoction?

10 MR. SNYDER: No, your Honor.

11 THE COURT: No.

12 MR. SNYDER: The one that is in the safe
13 is the fraudulent document --

14 THE COURT: Oh.

15 MR. SNYDER: -- which we want to test.

16 THE COURT: The original?

17 MR. SNYDER: The original version of the
18 doctored contract, which came into existence we
19 believe recently.

20 THE COURT: I was talking about the
21 contract that Mr. Zuckerberg apparently agrees he
22 did sign with Mr. Ceglia.

23 MR. SNYDER: I do not know, your Honor, if
24 the plaintiff still has a copy of the authentic
25 real contract.

1 THE COURT: Because the plaintiff could --
2 claims that this is the original contract.

3 MR. SNYDER: Of course, right.

4 THE COURT: But Mr. Zuckerberg was not
5 given a copy or duplicate of the actual Street
6 Search contract that he agrees that apparently he
7 did sign.

8 MR. SNYDER: Your Honor, he was 18 years
9 old at the time. He was a freshman at college.
10 And this event in his life at the time was a
11 meaningless event. It was insignificant in the
12 context of his life. Like most 18 year olds who
13 pack up their dorms and move away for the summer,
14 whether he had it or didn't have it, doesn't have
15 it today, it was a --

16 THE COURT: Does he recall having it?

17 MR. SNYDER: He certainly recalls signing
18 the contract, and recalls without qualification,
19 without question, without ambiguity that the only
20 business he did with this man related to StreetFax,
21 period. I mean, there's no question in his mind
22 about that. And, in fact, Facebook did not --

23 THE COURT: His recollection is quite
24 clear about the contract and its terms and
25 conditions and its purpose and objectives relating

1 to coding, delivery of program, software to carry
2 out Mr. Ceglia's specifications for the Street
3 Search software?

4 MR. SNYDER: Crystal clear.

5 THE COURT: Crystal clear. And he was
6 getting money for it, and -- but -- and he signed
7 it, but he doesn't recall whether he ever obtained
8 a copy, was given a copy by Mr. Ceglia at that
9 time.

10 MR. SNYDER: Whether -- he may have been
11 given a copy, but he certainly doesn't have one
12 today anymore than he has many of his belongings.

13 THE COURT: That's what I'm asking. Does
14 he recall getting a copy?

15 MR. SNYDER: He does not recall getting a
16 copy, although he may have gotten a copy.

17 THE COURT: I see.

18 MR. SNYDER: And the point here, your
19 Honor --

20 THE COURT: And he didn't search his
21 records in connection with the lawsuit to see if
22 it's --

23 MR. SNYDER: We do not have a copy --

24 THE COURT: -- maybe in his parent's attic
25 somewhere in some box, you know --

1 MR. SNYDER: Your Honor, if we --

2 THE COURT: -- versus --

3 MR. SNYDER: If he only knew when he was
4 18 that he was going to go on to found Facebook
5 turned into a big company, and that eight years
6 later some man would sue him, he probably would
7 have saved the contract. But like most 18-year-old
8 kids, packing up their boxes, moving from one place
9 to another, many of his possessions, personal and
10 otherwise, destroyed, left behind. And this was no
11 more important than any other meaningless piece of
12 paper at the time. In fact, he hadn't gotten paid,
13 gave up on getting paid, so the piece of paper, the
14 authentic contract, the StreetFax contract wasn't
15 worth the paper it was written on at that time.

16 So, we have established prima facie evidence,
17 your Honor, that expedited targeted discovery is
18 necessary.

19 THE COURT: Well, can we focus on that for
20 a second?

21 MR. SNYDER: Sure.

22 THE COURT: Where would we end up if we
23 had targeted expedited discovery focusing on the
24 authenticity issue?

25 MR. SNYDER: In the event, your Honor --

1 THE COURT: Procedurally.

2 MR. SNYDER: Yes, your Honor. What we
3 would propose is a 30-day period, 30 days after the
4 production of what we say are the instruments of
5 the fraud, which we've delineated in our motion,
6 within 30 days we would conduct all the testing.

7 THE COURT: I'll get to that. That's the
8 protocol I think.

9 MR. SNYDER: Yes.

10 THE COURT: I want to talk about that.
11 What I'm asking is, is the objective here to
12 persuade the plaintiff that he is a liar and a
13 fraud artist, and his lawyers and get them to
14 basically throw the towel in?

15 MR. SNYDER: I can't get inside the head
16 of this plaintiff because he appears --

17 THE COURT: That's my point, what is
18 the --

19 MR. SNYDER: My objective is to obtain
20 evidence, which we would then present to this Court
21 in support of a motion to dismiss the complaint on
22 the grounds that the plaintiff is committing, has
23 committed and intends to commit a fraud on this
24 Court. And the case law is clear that under this
25 Court's inherent power, there is no more

1 appropriate reason to dismiss a complaint than --

2 THE COURT: See, that's not in your
3 papers, that's why I asked the question. I'm
4 having difficulty understanding where we are going
5 procedurally. Because from all the plaintiff has
6 put in, it sure looks like they have no intention
7 of throwing the towel in, that their experts are
8 quite competent, if not equally competent or even
9 more competent than your experts, and that it would
10 be -- and that's why I'm asking this question. It
11 would be a surprise to me if -- if as a result of
12 all the testing that you would accomplish -- and
13 I'm not saying I'm not going to allow you to do it
14 here, I'm just trying to understand what is it I'm
15 signing up for.

16 MR. SNYDER: That's --

17 THE COURT: What is it that I'm signing up
18 on behalf of Judge Arcara for?

19 MR. SNYDER: I think --

20 THE COURT: If I could finish. And that
21 is, does it position you then to make a motion for
22 partial summary judgment? I mean, how -- how does
23 it stop the case -- how does it stop the case
24 unless they concede as a result of the destructive
25 testing and otherwise that the -- that Mr. Ceglia's

1 got either a very bad recollection, or all of the
2 nasty things that you attribute to him are true, in
3 which case, there are two sworn affidavits here,
4 and who knows what the U.S. attorney might be
5 thinking about with these affidavits.

6 So what I'm getting at is, if it turns out that
7 the plaintiff's experts, after concomitant testing,
8 using the same protocols, come to a completely
9 different conclusion, even under inherent power,
10 which is the first time I've heard that that's your
11 strategy here procedurally, how does the case
12 terminate? The case seems to me to go forward to
13 jury trial.

14 MR. SNYDER: I think that that's the right
15 question, and if I may respond?

16 THE COURT: Thank you.

17 MR. SNYDER: Thank you. First
18 preliminarily, I respectfully disagree that the
19 experts who submitted declarations on behalf of the
20 plaintiff endorse or attest to under oath the
21 authenticity of either the emails or the contract.
22 What they do is they make observations about that
23 evidence. But none attest to the authenticity. In
24 fact, it's the opposite. Again, they -- the expert
25 who submitted a declaration concerning the emails

1 said I understand these are emails, and all he said
2 was documents, which I understand are emails --

3 THE COURT: Concentrate on the contract.

4 MR. SNYDER: And on the contract there was
5 no testimony given by the experts that this was an
6 authentic contract, that it was a legitimate
7 contract, that they tested it in the ways that
8 document examiners need to test documents to
9 ascertain authenticity.

10 THE COURT: What is your point? You're
11 saying to me that, Judge, not to worry, when we get
12 through with this document and they get through
13 with the document, all the experts are going to be
14 in agreement it's a fraud.

15 MR. SNYDER: That is our expectation. And
16 in the event that we are able to establish that
17 based on this testing, we believe at that time this
18 Court would not only --

19 THE COURT: In the event that you are able
20 to establish it?

21 MR. SNYDER: Yes.

22 THE COURT: No. You say you will
23 establish it.

24 MR. SNYDER: We expect to establish it.
25 Until the testing is done your Honor --

1 THE COURT: You can't be sure.

2 MR. SNYDER: I can't be sure. Because the
3 testing is multi-faceted. It's actually
4 fascinating --

5 THE COURT: So is it possible that your
6 experts -- your experts would change direction and
7 say, look --

8 MR. SNYDER: No.

9 THE COURT: -- it is authentic.

10 MR. SNYDER: It's impossible that my
11 experts will say that it's authentic.

12 THE COURT: Because?

13 MR. SNYDER: Because they've already
14 determined based on visual observation, Mr. Romano
15 has, and other evidence, that it's amateurish
16 forgery. The question is --

17 THE COURT: Why do they need to see it
18 through expedited discovery?

19 MR. SNYDER: Because there are additional
20 tests that need to be conducted based on document
21 forensic examination protocols that are necessary
22 to fully confirm the conclusion based on visual
23 inspection that the document is a fraud. For
24 example, there are tests that can be done
25 microscopically in terms of paper and toner. There

1 are optical lights that can be used to see
2 differences in ink, paper, and opaqueness of the
3 pages. There's ink extractions which don't hurt
4 the integrity of the document to sample and
5 identify whether the ink is the same on both pages
6 and how old it is. There are differences in paper
7 fibers --

8 THE COURT: I'm familiar with those
9 things.

10 MR. SNYDER: -- and the like, your Honor.

11 THE COURT: We had a case under my
12 criminal jurisdiction many years ago where we got
13 into these very same issues.

14 MR. SNYDER: So there's no chance that any
15 of our experts will change their view. The
16 question is the quality --

17 THE COURT: There's no chance?

18 MR. SNYDER: No chance. The question is
19 quality and quantum of evidence that we would like
20 to present to this Court in support of a motion to
21 dismiss --

22 THE COURT: Okay.

23 MR. SNYDER: And the case law is clear
24 that even where a plaintiff raises --

25 THE COURT: Under inherent authority?

1 MR. SNYDER: Yes.

2 THE COURT: I see.

3 MR. SNYDER: Even where a plaintiff raises
4 his right hand and swears to something, if the
5 evidence on the other side confirms the existence
6 of a fraud --

7 THE COURT: How does the court do that
8 then? If there are conflicting expert opinions,
9 does the court conduct a bench trial, or is it a
10 jury trial, an advisory jury trial? I've never
11 heard of such a thing. This is a totally new
12 concept. Inherent power I understand. But in this
13 context, your papers don't elaborate, and that's
14 why I'm asking these questions.

15 MR. SNYDER: Right. We didn't --

16 THE COURT: I don't want to sign up for
17 the proverbial marching up the mountain only to
18 have to march down again, even though I'm very
19 sensitive to all the concerns that are raised here.

20 MR. SNYDER: Let me give the legal
21 framework and then some of the practical --

22 THE COURT: Let's put it this way. I want
23 to make sure that once we launch this in the way
24 that you're requesting, that we know exactly where
25 we're going procedurally.

1 MR. SNYDER: Thank you. So let me give
2 your Honor, first, a legal framework and then a
3 procedural framework in response to your question.
4 Judge Larimer in the Campos case, which was a 2006
5 decision, stated that a plaintiff's knowing
6 presentation of a falsified document to a court is
7 sufficient ground for dismissal of his complaint.
8 That cited a First Circuit case, A-O-U-D-E versus
9 Mobile Oil which is a very well written decision by
10 the First Circuit --

11 THE COURT: Judge Larimer's decision would
12 be enough for me, so tell me about the Campos case,
13 what type of a case was it?

14 MR. SNYDER: In that case there was a
15 falsified document submitted by a prisoner in
16 connection with a grievance which contained
17 information which at the time of the alleged -- at
18 the time the document was allegedly written, wasn't
19 and couldn't have been known. It was a future
20 event, so he would have had to have been a psychic
21 to know the future. So in other words, proof
22 positive that it was a fraud.

23 THE COURT: So kind of like the
24 Streetscape LLC issue, so to speak?

25 MR. SNYDER: Or if we could prove, for

1 example, that a toner or ink or paper fiber didn't
2 exist at the time or the like.

3 THE COURT: I understand, okay. And Judge
4 Larimer -- did you -- is that in your papers? If
5 you could just tell me the reference, I don't need
6 to pursue it any further.

7 MR. SNYDER: Yes. It's 418 F.Supp 277.

8 THE COURT: Thank you. That's enough. So
9 there's authority for the court on its own motion
10 or on motion of the opposing party to make a
11 factual finding of fraud, dismiss the complaint,
12 and if you don't like it, take an appeal.

13 MR. SNYDER: Correct. And the first
14 department -- the First Circuit decision has
15 language which I think is very instructive. The
16 First Circuit in that case that Judge Larimer cited
17 with approval said it strikes us as elementary that
18 a federal district court possesses the inherent
19 power to deny the court's processes to one who
20 defiles the judicial system by committing fraud on
21 the court. The present case is a near classic
22 example of the genre of fraud of the court. This
23 is a case where a plaintiff fabricated a purchase
24 agreement, gave it to his lawyer, read the
25 complaint before it was filed, as Mr. Ceglia did,

1 because he verified the original complaint,
2 realized that counsel acting on his behalf proposed
3 to annex the bogus agreement to the complaint, thus
4 representing it to be authentic, and nevertheless
5 authorized the filing. This tactic plainly
6 hindered defendant's ability to prepare and present
7 its case, while simultaneously throwing a monkey
8 wrench into the judicial machinery.

9 THE COURT: And there were no opposing
10 opinions about it?

11 MR. SNYDER: There were.

12 THE COURT: In that case?

13 MR. SNYDER: In that case --

14 THE COURT: Other than the -- other than
15 the litigant?

16 MR. SNYDER: The litigant.

17 THE COURT: Just that?

18 MR. SNYDER: The litigant --

19 THE COURT: No. What I'm asking is either
20 in that case or Judge Larimer's case were there
21 dueling experts?

22 MR. SNYDER: I don't believe so, but I
23 don't regard there to be dueling experts in this
24 case --

25 THE COURT: Yet.

1 MR. SNYDER: -- in the sense of actually
2 addressing the authenticity of these documents.

3 THE COURT: Okay. Counsel, you've
4 answered my question.

5 MR. SNYDER: Thank you.

6 THE COURT: Thank you. Did you want to
7 turn to the -- to the protocol issue and the scope
8 of discovery issues?

9 MR. SNYDER: Yes. Thank you, your Honor.
10 There is no dispute here. In fact, the plaintiff
11 agrees and concedes that targeted discovery and
12 expedited discovery is warranted. The question, of
13 course, as your Honor just identified is the proper
14 protocol.

15 We believe that the plaintiff should be
16 directed within five days, seven days, whatever the
17 Court deems appropriate, to produce to the
18 defendants the documents and electronic material --

19 THE COURT: I'm sorry, I think we're not
20 on the same page.

21 MR. SNYDER: Sure.

22 THE COURT: No, pun intended here. I'm
23 looking at Mr. Evans's declaration. Did I miss one
24 of your expert declarations that had attempted to
25 articulate the protocols, and if I did I apologize.

1 MR. SNYDER: Yes, your Honor. It was
2 Mr. Rose.

3 THE COURT: Mr. Rose, I'm sorry.

4 MR. SNYDER: McGowan. I'm sorry, it was
5 McGowan.

6 THE COURT: McMenamin -- McGowan. So I
7 did miss it. Is it the same as Mr. Evans's
8 protocol?

9 MR. SNYDER: Essentially other than the
10 plaintiff wants --

11 THE COURT: What page should I look on in
12 his --

13 MR. SNYDER: It would be paragraph 17 and
14 18 of his declaration, which is the next to last
15 page.

16 THE COURT: He refers to a protocol, but I
17 guess that's what threw me off. I didn't actually
18 see one, unless it's in Exhibit A or B, and I've
19 been looking for it and didn't see it. But I did
20 see something that sure looked like a protocol to
21 me. I'm not sure I agree with it, but I sure
22 know -- I could at least sense it was genuinely an
23 effort to articulate a protocol, and that's at
24 page 3 and 4 of Mr. Evans's declaration.

25 MR. SNYDER: He does describe in his

1 affidavit --

2 THE COURT: Look, I'm simply trying to --

3 MR. SNYDER: Sure.

4 THE COURT: If you don't have it, just say
5 so, and I just need to know whether or not you
6 agree with Mr. Evans's protocol, so I don't have to
7 spend too much more time talking about the
8 protocol.

9 MR. SNYDER: I can go through each test we
10 want to perform and tell your Honor each declarant
11 talks about how --

12 THE COURT: Let me tell you why I'm
13 concerned about it.

14 MR. SNYDER: Sure.

15 THE COURT: Because when I leave on
16 vacation next week for two weeks if we -- since we
17 are going to launch discovery in this case one way
18 or another, I don't want to be called long distance
19 with a problem, Judge, we can't proceed with the
20 test because there's a disagreement on the issue of
21 the protocols.

22 MR. SNYDER: The way I would describe the
23 protocol is each of our declarants --

24 THE COURT: If you can't stipulate to it,
25 then before I do what I'm going to do next week,

1 probably overnight and tomorrow, the three sides,
2 you, Mr. Lake, and myself, are going to have to
3 agree on a protocol, and I'm just trying to
4 understand is this okay?

5 MR. SNYDER: No, your Honor. Each
6 declarant in support of our motion provides the
7 Court with how they will go about, that is, their
8 protocol, examining the documents and the
9 information that we are seeking in expedited
10 discovery.

11 THE COURT: Then I somehow missed what
12 Mr. McGowan was trying to say. He just refers to
13 Stroz Freeburg's protocol, but I don't know what
14 they are.

15 MR. SNYDER: If you look at his affidavit
16 paragraph 9, 10, 11 --

17 THE COURT: Oh.

18 MR. SNYDER: -- and 12, 13, 14, and 15, he
19 describes for the Court the analysis and inspection
20 protocol.

21 THE COURT: That's not a protocol.

22 MR. SNYDER: Those are the tests that he
23 intends --

24 THE COURT: I know, but that's not a
25 protocol.

1 MR. SNYDER: I think the protocol --

2 THE COURT: The protocol is how you go
3 about doing it so as not to have a dispute at the
4 end as to whether or not the opinion is competent.

5 MR. SNYDER: Right.

6 THE COURT: And if the parties aren't in
7 agreement, then I have a problem.

8 MR. SNYDER: Well, we don't believe the
9 plaintiff's consent to or are in agreement with our
10 protocol is necessary.

11 THE COURT: No, but I would sure like to
12 avoid motion practice over it, that's what I'm
13 trying to get at. And it's a very practical
14 question. And reading over Mr. Evans's, it just
15 seemed to be -- to be reasonable, and I'm asking
16 whether you agree or disagree. Did Mr. McGowan
17 look at Mr. Evans's proposed protocol and did he
18 agree or disagree with it?

19 MR. SNYDER: He did look it over, your
20 Honor.

21 THE COURT: And what's his -- what is his
22 opinion of it?

23 MR. SNYDER: His request is he would like
24 to conduct the test that he describes in his
25 affidavit, not necessarily in the order, sequence,

1 or manner that Mr. -- that the plaintiff's
2 expert --

3 THE COURT: Okay.

4 MR. SNYDER: -- suggests.

5 THE COURT: So you're saying there is at
6 this point no intent to agree to a protocol that
7 both sides are in agreement with. You're telling
8 me that you're going to go ahead and test the
9 materials according to your expert's protocol.
10 Judge, you don't have to approve it, so don't worry
11 about it, and that's it.

12 MR. SNYDER: Right.

13 THE COURT: And so if I got a call from
14 Mr. Lake saying, Judge, we don't agree with the way
15 they're going about it, it's so what, you'll have a
16 chance to do your own testing, and if there's an
17 issue of competency, whatever, as to the ultimate
18 opinion that's derived, Judge, you'll just have to
19 make the decision at that point based on dueling
20 protocols.

21 MR. SNYDER: Let me say this, the Evans
22 protocol, your Honor, relates only to the
23 electronic assets, not to the documents.

24 THE COURT: I'm trying to avoid hiring my
25 own expert to guide me on whether or not it was

1 done properly.

2 MR. SNYDER: I understand. The Evans
3 protocol, the so-called Evans protocol relates only
4 to the electronic assets, the computer, the hard
5 drives, the floppy discs.

6 THE COURT: Oh, okay.

7 MR. SNYDER: Not to the document testing.
8 That's a separate set of tests conducted by
9 different experts who have, in their declarations,
10 set forth with clarity their protocol.

11 THE COURT: Oh, I see. Okay. Thank you.

12 MR. SNYDER: The Evans protocol -- the
13 only major difference between the Evans protocol
14 and the protocol that would be employed by Stroz
15 Friedberg relates to the appointment of independent
16 examiners, and it's our position that we should be
17 able to conduct our tests ourself. Otherwise
18 there's no substantial material --

19 THE COURT: Okay.

20 MR. SNYDER: -- difference in the protocol
21 as it relates to the electronic assets.

22 THE COURT: So do I have your point
23 whereas I thought that I was being asked to approve
24 a protocol, that in actuality I need not be
25 concerned about that. Is that your -- is that --

1 MR. SNYDER: I don't think the Court needs
2 to be concerned about what specific tests are going
3 to be conducted.

4 THE COURT: If you choose the wrong one,
5 then it's your problem.

6 MR. SNYDER: Correct, your Honor.

7 THE COURT: You're pretty confident?

8 MR. SNYDER: I'm pretty confident that
9 Stroz Friedberg will follow the -- go by the book,
10 and there will be no question about what they did
11 or didn't do.

12 THE COURT: So if I had a question for
13 Mr. Lake, where at page 5 of the Evans declaration
14 articulating a series of protocols, that the Court
15 shall enter an order identifying the specific
16 electronic data that is to be imaged by the
17 independent consultant, because there's not --
18 because in your view --

19 MR. SNYDER: Sorry, your Honor.

20 THE COURT: Go ahead. You need to
21 consult, that's okay. Since you are attempting to
22 persuade the Court -- the Court doesn't get
23 involved with an independent consultant, again, I
24 don't have be concerned about that issue.

25 MR. SNYDER: Yes, your Honor.

1 THE COURT: Thank you. Tell me about --
2 then we'll let you take a break and get Mr. Lake
3 front and center. Take a break from your
4 presentation. Tell me about why we shouldn't have
5 mutual targeted accelerated discovery on this
6 issue.

7 MR. SNYDER: Your Honor, the plaintiff has
8 not demonstrated good cause to justify his broad
9 discovery requests. We're willing to and have said
10 in our papers, offered to provide plaintiff
11 discovery into the critical emails on the Harvard
12 server that describe the relationship between
13 plaintiff --

14 THE COURT: But only after the plaintiff
15 discloses and produces his emails, because you
16 think he can lay his hands on software that will
17 enable him to fabricate yet new emails --

18 MR. SNYDER: Yes, your Honor.

19 THE COURT: -- to make them appear as if
20 they're old emails that rebut, contradict,
21 undermine the Harvard emails.

22 MR. SNYDER: Yes. But our experts have
23 searched the Harvard server, have sworn to this
24 Court --

25 THE COURT: Isn't that -- I know how -- I

1 know what your answer is, but I can't help but ask
2 the question. He would be running an enormous risk
3 to attempt to pull a stunt like that, wouldn't he?

4 MR. SNYDER: This plaintiff, your Honor,
5 has proven to be brazen to the point of almost --

6 THE COURT: I knew it. I knew it.

7 MR. SNYDER: -- almost comical
8 proportions. This is a man, your Honor, who --

9 THE COURT: But you could detect that
10 fraud, couldn't you?

11 MR. SNYDER: We have detected his frauds
12 across the country.

13 THE COURT: That is my point. But it
14 wouldn't stop him because he's so brazen.

15 MR. SNYDER: You know that movie Catch Me
16 If You Can with Leonardo DiCaprio and no one can
17 catch him, that was fiction. Most --

18 THE COURT: No, it wasn't.

19 MR. SNYDER: Partial fiction.

20 THE COURT: Okay.

21 MR. SNYDER: Most thieves -- most thieves
22 and fraud doers when they're amateurs get caught.
23 This plaintiff when he ripped off people in
24 Florida --

25 THE COURT: Okay.

1 MR. SNYDER: -- got caught. This man when
2 he ripped off people in this area selling them wood
3 pellets, got caught --

4 THE COURT: A serial fraud artist.

5 MR. SNYDER: -- they put the handcuffs on
6 him just miles away from here.

7 THE COURT: That's your position.

8 MR. SNYDER: And he's gotten caught here
9 again. So I have no idea how his mind operates --

10 THE COURT: But the point is that I think
11 what you're simply -- you're agreeing with me,
12 that, yeah, if he was given mutual discovery and
13 access to those Harvard emails, he'll defraud
14 again, but, guess what, he'll get caught. So
15 what's the harm in it?

16 MR. SNYDER: The harm in it is we'll be in
17 court having to file yet additional motions,
18 undergo even more expense and burden, and I don't
19 think that this plaintiff should be rewarded, given
20 the showing we've made, and these emails that we
21 have are safely in our possession.

22 THE COURT: But getting caught for
23 committing further fraud on the court doesn't sound
24 like being rewarded, but I understand your point,
25 okay. Is that the only reason not to permit mutual

1 discovery? Because it is a -- it is an unusual
2 request.

3 MR. SNYDER: Well, your Honor --

4 THE COURT: I mean, I've been on the bench
5 20 years and I've never seen anything like this.
6 But then again, I've never seen anything like this.

7 MR. SNYDER: The threshold question in
8 this case -- the threshold question in this case,
9 your Honor, is the authenticity of the contract and
10 the emails. Therefore, it's our position that all
11 of the expedited discovery within a 30-day window
12 should address those two critical core documents,
13 and not a fishing expedition into all of the
14 subjects that this plaintiff --

15 THE COURT: Is that the only reason to not
16 grant mutual discovery, expedited discovery, is the
17 potential for him to engage in a further fraud to
18 rebut the Harvard email?

19 MR. SNYDER: There are two or three other
20 reasons.

21 THE COURT: Okay. What are they?

22 MR. SNYDER: The other reason --

23 THE COURT: I know I read the papers, but
24 it's a lot of material, and I like to hear it again
25 so --

1 MR. SNYDER: Yes. The other reason, your
2 Honor, is not only because we don't want to give
3 him a roadmap, but because this plaintiff has not
4 demonstrated good cause to go beyond expedited
5 discovery on the core foundational documents in the
6 case. And if he is given that mutual discovery
7 into other more wide-ranging issues in this case,
8 it will burden and prejudice us. There will be
9 time, there will be more expense. It will delay
10 the case.

11 And it's not necessary here, because what we're
12 proposing can short circuit the case and avoid
13 months of protracted discovery of the kind that
14 this plaintiff is proposing. In addition, your
15 Honor, there is a, I think, institutional interest
16 that this Court can and should have in not
17 permitting a plaintiff, based on fraudulent
18 documents, to then have a license to conduct a
19 fishing expedition into matters unrelated to the
20 authenticity of those core documents until and
21 unless he can establish their authenticity. So for
22 him to go searching around Facebook's records and
23 Mr. Zuckerberg's records about a whole host of
24 topics unrelated to these two core documents, we
25 think would --

1 THE COURT: In other words, all of the
2 things that he -- I'm drawing your attention to,
3 and you know what I'm referring to, page 12 and 13
4 of the plaintiff's memorandum, there are listed
5 therein one, two, three, four, five categories of
6 which don't sound burdensome --

7 MR. SNYDER: I can address each, your
8 Honor.

9 THE COURT: Yes, that's my point. What is
10 wrong with, for example, getting all documents
11 constituting or reflecting or referring to
12 agreements between plaintiff and Zuckerberg --

13 MR. SNYDER: Well, your Honor --

14 THE COURT: -- what's wrong with that?

15 MR. SNYDER: We have none, so that's --

16 THE COURT: That's the first time I've
17 heard that. Did you say that in your reply? I
18 don't remember that.

19 MR. SNYDER: We have -- I said to your
20 Honor today that Mr. Zuckerberg doesn't have a copy
21 of the contract, and therefore we would agree to
22 mutual discovery on that, and there's nothing to
23 exist.

24 THE COURT: The only emails that refer to
25 it are the ones we've been discussing, and you

1 don't want those to be provided for the reasons you
2 stated.

3 MR. SNYDER: We will provide those emails
4 after Mr. Ceglia --

5 THE COURT: So that request is actually
6 okay.

7 MR. SNYDER: Yes, your Honor.

8 THE COURT: As a request, as a mutual
9 request. But as long as it's sequenced.

10 MR. SNYDER: Yes.

11 THE COURT: Well see, then that -- that is
12 an argument in favor of mutual discovery.

13 MR. SNYDER: As we said in our papers --

14 THE COURT: Don't you see that?

15 MR. SNYDER: As we said in our papers --

16 THE COURT: You see that?

17 MR. SNYDER: Yes, your Honor, I do.

18 THE COURT: Thank you. All right. Lets
19 move to the second one. All documents constituting
20 or reflecting or referring to communications
21 between plaintiff and Zuckerberg, which
22 communications include, but are not limited to --
23 oh, this is the one -- actually this is repetitive
24 of the first one.

25 MR. SNYDER: Yes.

1 THE COURT: So we've discussed that. And
2 then the one you don't like especially is the next
3 one, all documents including communications
4 created, dated, received before July 30th,
5 '04 referring to Facebook, et cetera.

6 MR. SNYDER: Right. That, your Honor, is
7 a fishing expedition --

8 THE COURT: That sort of begs of question.

9 MR. SNYDER: Begs the question. And it's
10 a fishing expedition, and it goes way beyond
11 whether these documents are authentic or a
12 fabrication.

13 THE COURT: Because we still have to
14 decide authenticity, right?

15 MR. SNYDER: Yes.

16 THE COURT: All documents constituting,
17 reflecting, or referring to payments made to
18 Zuckerberg. This would be the \$9,000 worth of
19 payments. He doesn't have those either.

20 MR. SNYDER: We have some checks, your
21 Honor. But it's -- I think, again --

22 THE COURT: You have some?

23 MR. SNYDER: Yes, your Honor. And I don't
24 think that that is --

25 THE COURT: Do you have a problem giving

1 those over?

2 MR. SNYDER: I do in the sense that I just
3 think it's inappropriate for this plaintiff to
4 have --

5 THE COURT: Have any discovery whatsoever
6 because he's a con artist.

7 MR. SNYDER: Because --

8 THE COURT: You don't like him.

9 MR. SNYDER: I have no feelings about him
10 one way or another.

11 THE COURT: You don't?

12 MR. SNYDER: I don't, your Honor. Other
13 than that I think he should be brought to justice.

14 THE COURT: You wouldn't invite him over
15 for dinner, would you?

16 MR. SNYDER: I would not.

17 THE COURT: Okay. Then you do have some
18 feelings. I'm only kidding, trying to lighten the
19 load here.

20 MR. SNYDER: Yes, your Honor. Look, your
21 Honor, whether or not Mr. Zuckerberg wrote a few --
22 received a few checks --

23 THE COURT: It's not a biggy. It doesn't
24 impact on the ability to conduct competent analysis
25 showing lack of authenticity, but there's no good

1 cause for it.

2 MR. SNYDER: There's no good cause for it.

3 THE COURT: How about this one, the last
4 one. No less than 30 handwriting samples from
5 Mr. Zuckerberg written between January 1st, '03,
6 and July 31st, '04. What about that?

7 MR. SNYDER: There's no good cause even
8 remotely for that, your Honor.

9 THE COURT: Well, isn't there -- isn't
10 there one implied? I mean Mr. Zuckerberg stated
11 under oath he didn't sign this agreement.

12 MR. SNYDER: He did not sign --

13 THE COURT: But he did sign some
14 agreement.

15 MR. SNYDER: Correct. So the question is
16 not whether the signature --

17 THE COURT: So the question is whether
18 it's his signature on this agreement.

19 MR. SNYDER: That's not a disputed issue
20 in the case.

21 THE COURT: It's not?

22 MR. SNYDER: Whether he signed -- whether
23 that is his signature.

24 THE COURT: I thought you just told me it
25 was.

1 MR. SNYDER: That signature appears on
2 page --

3 THE COURT: He didn't sign it.

4 MR. SNYDER: The signature appears on
5 page 2 of the agreement. Page 1 of the agreement
6 is the page that contains the fraudulent and
7 doctored language about Facebook.

8 THE COURT: Then again, maybe I'm just a
9 tad confused. Are you saying that page two is an
10 authentic copy of the page two of the agreement
11 that he did sign relative to the Street project?

12 MR. SNYDER: I'm saying it may be in the
13 sense that it appears to be Mr. Zuckerberg's
14 signature, meaning to say it appears to be his
15 signature or a very good copy of his signature.
16 And the content of page 2 is not inconsistent with
17 a Zuckerberg-StreetFax relationship concerning
18 StreetFax. Page 2 says nothing about Facebook --

19 THE COURT: It's all about page 1, which
20 is an initialing --

21 MR. SNYDER: Correct. And page 2, your
22 Honor --

23 THE COURT: -- which is not a signature.

24 MR. SNYDER: It's two letters of the
25 alphabet in capital letters.

1 THE COURT: Exactly. So that's why this
2 last one, although facially, would seem to be
3 relevant to the issue of authenticity is actually
4 not, because you're conceding that page two
5 signature is Zuckerberg's.

6 MR. SNYDER: Or a very, very good copy.

7 THE COURT: Are you conceding that it is?

8 MR. SNYDER: I'm conceding that
9 Mr. Zuckerberg recognizes that to appear to be his
10 signature, or someone who copied what looks very
11 much like his signature.

12 THE COURT: But he can't say that that's
13 not the document that he didn't sign.

14 MR. SNYDER: Excuse me? It appears to be
15 consistent with page 2 -- from his recollection as
16 a freshman at Harvard, it appears to be consistent
17 with his recollection of the deal relating to
18 StreetFax and parenthetically, your Honor, there
19 are multiple places in page two where, if the real
20 deal related to Facebook, you would expect to see
21 references to Facebook, and instead the references
22 are all to StreetFax on page 2.

23 THE COURT: For example?

24 MR. SNYDER: For example, they're
25 indemnification provisions, they're copyright

1 ownership provisions, and they all the relate to --
2 they all relate to StreetFax, and if, in fact,
3 Mr. Zuckerberg --

4 THE COURT: Look, this was between two
5 laymen, one very unsophisticated college sophomore
6 or freshman was he?

7 MR. SNYDER: Freshman.

8 THE COURT: But very precocious and
9 brilliant obviously, and another person who wasn't
10 a lawyer. And the thing is obviously almost half
11 unintelligible from a lawyer's point of view --

12 MR. SNYDER: One thing -- I respectfully
13 disagree, your Honor, because one thing that is
14 intelligible --

15 THE COURT: You get my point?

16 MR. SNYDER: Yes.

17 THE COURT: It's not surprising that
18 there -- the second page has all of this arguably
19 irrelevant boilerplate that he admittedly cut and
20 pasted from who knows where and tried to be his own
21 lawyer, and we know what Abe Lincoln said about
22 being your own lawyer, and so this is what you end
23 up with.

24 MR. SNYDER: Respectfully --

25 THE COURT: I don't know that it's

1 terribly probative.

2 MR. SNYDER: Respectfully, your Honor, I
3 think it's the opposite, and it's highly probative.
4 Page 1, which is the doctored contract that this
5 plaintiff made up, is replete with references to
6 Facebook. Page 2 is not just a form document.
7 Page 2 refers to StreetFax, so this plaintiff would
8 have had to insert StreetFax on page 2, and it
9 makes utterly no sense that this plaintiff would be
10 given a 50 percent interest in Facebook on page 1,
11 and an interest -- and contract regarding StreetFax
12 on page 1, but page 2 would only discuss StreetFax.
13 It makes no sense.

14 THE COURT: If there was a two-page
15 agreement between Zuckerberg and Ceglia at the
16 beginning, it's arguable that the second -- no, the
17 second page is equally a fabrication somehow?

18 MR. SNYDER: No, the second page --

19 THE COURT: It's all right.

20 MR. SNYDER: -- is consistent with the
21 StreetFax agreement.

22 THE COURT: So he basically doctored up
23 another document and stapled the two things
24 together and called it the contract.

25 MR. SNYDER: Which is why the world's most

1 renowned document expert at the Rochester Institute
2 of Technology, the leading center of the world for
3 document examination, just on a visual examination
4 of page 1 called it an amateurish forgery pursuant
5 to the penalties of perjury, that's what this man,
6 before he even got his hands on the original one
7 and conducted the other tests that he would like to
8 conduct.

9 THE COURT: Well, an opinion is an
10 opinion. I don't know that anybody's been
11 prosecuted for giving an inaccurate opinion. All
12 right. Thank you for that.

13 All right. What else do you want to tell me
14 before we let Mr. -- sorry to keep you on your feet
15 so long.

16 MR. SNYDER: No, your Honor, it's fine.
17 Unless the Court has any questions, I think we've
18 covered everything.

19 THE COURT: I think you've helped me on
20 mutuality. You've helped me on the protocol issue.
21 The reason I raise the protocol issue is because in
22 your letter you thought we should adjourn or
23 dispense with the 16(b) aspects of today's hearing
24 and then, of course, you point out except for the
25 issue of mutuality, but that goes to your motion,

1 and protocol, so I'm trying to discuss protocol
2 because you discussed protocol.

3 MR. SNYDER: Yes, your Honor.

4 THE COURT: Now you're telling me I don't
5 need to be concerned about protocol. That's why I
6 raised it.

7 MR. SNYDER: May I discuss one other
8 topic, your Honor, which is --

9 THE COURT: So now it's not important for
10 the Court to address the issue of protocol?

11 MR. SNYDER: If by protocol you mean what
12 the --

13 THE COURT: What did you mean in your
14 letter when you used the word protocol?

15 MR. SNYDER: What the Court does not need
16 to worry about is how our forensic experts are
17 going to examine the computers, the tests they're
18 going to conduct on the floppy discs and the hard
19 drives. They're going to do that by the book.

20 THE COURT: Yeah.

21 MR. SNYDER: By protocol I meant what
22 they're going to deliver to us, when they're going
23 to deliver it to us, and the like.

24 THE COURT: And that is listed where?

25 MR. SNYDER: In our order, your Honor, our

1 proposed order I think.

2 THE COURT: Which is part of -- I know I
3 have --

4 MR. SNYDER: I can hand up another one for
5 the Court. May I approach, your Honor?

6 THE COURT: Yeah. Thank you. All right.
7 Okay. And do you have a copy of this, Mr. Lake?

8 MR. LAKE: Their proposed order? Yes.

9 THE COURT: Okay. Thank you. Why don't
10 we give you a break?

11 MR. SNYDER: Thank you, your Honor.

12 THE COURT: Thank you. Mr. Lake. And
13 again, you may be seated or you may use the podium,
14 at your pleasure, sir.

15 MR. LAKE: I'll tell you what, I'll stand
16 up until I get tired, and if I need to I'll sit
17 back down, how's that?

18 THE COURT: All right. What do you think,
19 Terry, a candidate for the U.S. attorney's
20 basketball team?

21 MR. LAKE: That's right. If my back and
22 ankles weren't ruined, I'd play a lot more
23 basketball. But now I spend most of my time
24 playing baseball, so -- I can still pitch and
25 catch. It's just hard to run around in the

1 outfield.

2 THE COURT: I wouldn't want to be swinging
3 against you, okay.

4 MR. LAKE: I won't throw you a curve ball,
5 I promise.

6 THE COURT: Extra points. All right.

7 MR. LAKE: Good afternoon. My name is
8 Jeff Lake, and I represent Paul Ceglia. As you
9 know, I've been in this case now for my second day,
10 so, I have a little bit less information than
11 perhaps counsel for Facebook.

12 THE COURT: We're a little dubious about
13 that, Mr. Lake.

14 MR. LAKE: Excuse me?

15 THE COURT: We're a little dubious about
16 that, because you gained general admission in this
17 court in April?

18 MR. LAKE: That's right. That's right. I
19 know Mr. Ceglia and Mr. Argentieri. I have served
20 as Mr. Ceglia's person counsel, but not in this
21 matter until yesterday.

22 THE COURT: But you're not unfamiliar with
23 the case?

24 MR. LAKE: I am familiar with the case.

25 THE COURT: Okay.

1 MR. LAKE: I just have not had an
2 opportunity to review the case files that were
3 generated by Mr. Connors, Mr. Vacco, or Mr. Hall.
4 That information has not been provided to me yet,
5 so there is a vast --

6 THE COURT: Understood.

7 MR. LAKE: -- universe of information I
8 haven't seen. I have read the papers though.

9 THE COURT: For purposes of the motion, I
10 think it looks to me like it's all there. But you
11 go ahead and comment as best you can. We really do
12 need to move forward with this case. That's why I
13 denied the defendant's motion because I frankly
14 didn't understand what he was saying. If he had
15 explained himself a little more thoroughly about
16 the protocol issue, maybe I would have. And I just
17 don't like granting motions if I don't fully
18 understand them. And the same for you. The case
19 is quite significant, and I felt as defendants
20 obviously pointed out, look, they're not the ones
21 who decided to change counsel on Mr. Ceglia's side
22 and neither is the Court, and that's why we decided
23 to go forward, and we're most grateful that you
24 came to be with us, and we ordered up a beautiful
25 day, and if you're not actually --

1 MR. LAKE: I actually brought this with me
2 from California.

3 THE COURT: Is that right?

4 MR. LAKE: Hopefully I'll bring a lot more
5 just like them.

6 THE COURT: Let's hope so.

7 MR. LAKE: Thank you. And I appreciate
8 that. I, you know, the reason that there's a
9 change in counsel obviously is between the former
10 lawyers and the client --

11 THE COURT: I'm not interested.

12 MR. LAKE: I can't address that issue.

13 THE COURT: It's okay.

14 MR. LAKE: All I can tell you is what I
15 know, and the first thing in that regard is that
16 that there is no doubt and no dispute that we want
17 to move this case forward as quickly and
18 expeditiously as possible. Our biggest concern is
19 fairness and neutrality. We have --

20 THE COURT: Why do you have good cause or
21 even any reasonable basis to participate in the
22 accelerated discovery going to the issue -- beyond
23 the issue of authenticity, as we denominated the
24 request as stated, and then you have some other
25 ones that you would like to proffer at pages 12 and

1 13 of your former counsel's papers.

2 MR. LAKE: Right. Actually I agree with
3 you that we need to break this into compartments,
4 and I agree with counsel that the first order of
5 business is to talk about the authenticity of the
6 original documents that we have. Until a few
7 minutes ago we had no idea whether or not
8 Mr. Zuckerberg had maintained or preserved the
9 original copy -- or the original that he was given
10 in April of 2003. We know that there were two
11 originals that were signed. Each party was given
12 one.

13 THE COURT: Duplicate originals?

14 MR. LAKE: Correct. Mr. Ceglia preserved
15 his. Mr. Zuckerberg has either --

16 THE COURT: So we don't have a best
17 evidence problem here? I forgot to ask Mr. Snyder
18 about that.

19 MR. LAKE: Right. Whether theirs was
20 lost, destroyed --

21 THE COURT: We're good, because we have
22 Mr. Ceglia's original?

23 MR. LAKE: Correct. We do. We have the
24 best evidence of the contract that was entered into
25 between Mr. Ceglia and Mr. Zuckerberg and we

1 have --

2 THE COURT: Indeed the only evidence that
3 under the rule you --

4 MR. LAKE: We need.

5 THE COURT: -- you have to have.

6 MR. LAKE: That's right. That's right.
7 And that means that everything else we're talking
8 about is ancillary to the core issue of this case,
9 and that is, is this agreement, did they make a
10 deal, and if so, what are those terms? And if the
11 jury finds that there's a deal, then we can discuss
12 what Mr. Ceglia is entitled to.

13 THE COURT: But you feel that you need
14 these documents -- in other words, even if we
15 didn't have this motion -- and this is an issue I
16 didn't get a chance to speak to Mr. Snyder about --
17 what I would ordinarily expect would be service of
18 first set of interrogatory document requests. And
19 what's not clear, and I think this is the heart of
20 -- well, aside from their perturbation over your
21 client's lack of candor here and truthfulness,
22 would you -- how are these requests germane to the
23 issue of authenticity?

24 MR. LAKE: And the answer to that --

25 THE COURT: And you can see I focused on

1 the handwriting samples because I thought, well,
2 gee that's certainly --

3 MR. LAKE: That's --

4 THE COURT: -- important.

5 MR. LAKE: That's directly on point.

6 THE COURT: But now he says well no,
7 actually, Judge, we don't really -- which I didn't
8 understand from his papers, we're not really
9 quarreling about the second page per se, and we
10 don't need to be concerned about whether that's
11 Zuckerberg's signature or not, because it probably
12 is. And that indeed is the second page of the
13 original document that your client has an original
14 duplicate of, and unfortunately Mr. Zuckerberg
15 can't find his. It's the first page, which is the
16 initialing, and we don't know who -- or maybe you
17 can tell us, because again I don't recall seeing it
18 in the papers.

19 MR. LAKE: Both parties.

20 THE COURT: Pardon me?

21 MR. LAKE: Both parties initialed the
22 front.

23 THE COURT: I agree, but who wrote the
24 language in, that's a little unclear.

25 MR. LAKE: Mr. Ceglia.

1 THE COURT: Mr. Ceglia.

2 MR. LAKE: Right. You're right, and --

3 THE COURT: So how do you get a
4 handwriting sample of a person making an initialing
5 with regular lettering?

6 MR. LAKE: Well, I would -- I would
7 imagine that Mr. Zuckerberg has signed checks,
8 applications, taxes. There are --

9 THE COURT: Other sources by which that
10 initialing can be determined --

11 MR. LAKE: Can be authenticated to say
12 yes --

13 THE COURT: -- to be his or not. I see.
14 I see.

15 MR. LAKE: -- I wrote, I signed an
16 agreement.

17 THE COURT: That's why you need 30
18 handwritten samples, and you would include in that
19 possibly initialing.

20 MR. LAKE: Yes.

21 THE COURT: Even though this particular
22 request doesn't say so.

23 MR. LAKE: It should have said initials as
24 well.

25 THE COURT: Exactly.

1 MR. LAKE: And this is why. And I'm with
2 you on this point. This case is not about what's
3 happening with Facebook now. It's not about
4 Facebook's users. It's about -- the only degree it
5 has anything to do with Facebook now is its
6 investors and whether or not they can invest in
7 something that Mr. Zuckerberg owns. Other than
8 that, this case is about Mr. Ceglia and
9 Mr. Zuckerberg and what happened in 2003 and 2004.
10 So we can't lose sight of that. All of the
11 evidence that we're going to present is going to be
12 evidence from that time period. And so we need to
13 focus on that time period and that includes --

14 THE COURT: I understand that. But that's
15 the -- that's the relevance of -- and that's the
16 good cause or the reasonable basis for that
17 request.

18 MR. LAKE: Right, for the signatures and
19 the initials.

20 THE COURT: That's why you feel you need
21 mutuality.

22 MR. LAKE: Correct.

23 THE COURT: Certainly on that one.

24 MR. LAKE: Yes.

25 THE COURT: How about the others?

1 MR. LAKE: Yes. Okay. And here's what it
2 comes down to. The defense has taken an
3 all-or-nothing defense to this case. They are not
4 saying we disagree with the terms of the contract,
5 and we may not be liable for any monetary damages.
6 What they are saying is -- and they said it under
7 the penalty of perjury, we didn't sign it, the
8 emails are fake, this has nothing to do with us,
9 that's it. Which means conversely to their
10 position where they think that their experts, by
11 the way, who have never seen the original contract.
12 All their opinions that they submitted in their
13 declarations to support their motion are based upon
14 reading a photocopy taken from a pleading that --

15 THE COURT: Were any of your experts given
16 access to the original? I can't recall.

17 MR. LAKE: Yes, absolutely.

18 THE COURT: That's right.

19 MR. LAKE: The opinions that were
20 expressed in our expert's declarations were as a
21 result of reviewing the actual original contract.

22 THE COURT: Right.

23 MR. LAKE: So, they're maintaining this
24 case is a fraud, and that Mr. Ceglia is a fraud.
25 They haven't provided any evidence to us at all.

1 The only thing they've done is continuously and
2 systematically attacked Mr. Ceglia's credibility,
3 his character, and all of these inadmissible events
4 that may or may not have occurred in his past.
5 They haven't focused on the issue of this case at
6 all until today for the very first time admitting
7 to you, oh, we don't have a contract. We don't.
8 We had it. We don't know where it is.

9 So what we need to do in this case is, if
10 they're the pot calling the kettle black, and they
11 want to dive in to the history of Mr. Ceglia
12 because they think it's admissible, relevant
13 evidence, then they should also understand how
14 their client got to where he is, and what he has
15 done over this time period as a serial --
16 absolutely -- not only did he admit it, he
17 advertised it that he was a computer hacker, that
18 he has broken into servers and emails, and he is a
19 professional at manipulating electronic data. He
20 has been sued by his partners over the creation of
21 Facebook, the foundation of Facebook, the selling
22 of Facebook, and selling multiple shares.

23 THE COURT: So how -- just give me any
24 explanation as to how, for example, the one that
25 they're particularly touchy about, which is all

1 documents including communications as defined above
2 created, dated, or received before July 30th, '04,
3 referring, reflecting, or relating to The Facebook,
4 facebook.com, Facebook -- you know what I'm
5 referring to, The Pagebook, thepagebook.com or any
6 other online service or Web site that is similar to
7 a live functioning yearbook, including the funding
8 for or of any such projects. How does that help --

9 MR. LAKE: What is the relevance of that?

10 THE COURT: -- help -- help to establish
11 authenticity?

12 MR. LAKE: The idea --

13 THE COURT: And I realize you just stepped
14 in.

15 MR. LAKE: I know. I anticipated this
16 question. It's the same question I asked myself.
17 We need to know these answers. And we'd like to
18 know them quickly, because we disagree with
19 counsel. We think that once this information is --

20 THE COURT: You're not answering the
21 question.

22 MR. LAKE: Right. Here's why. Because
23 they're saying that the dispositive emails that
24 support their position that the contract is fake
25 are the Harvard emails that they're willing to

1 produce. What they did not say is that
2 Mr. Zuckerberg had the opportunity to and may have
3 deleted all of the emails on the Harvard server
4 that he didn't like that had to do with Mr. Ceglia.
5 We contacted Harvard as well, and we asked them --
6 my predecessors did -- is it possible to tell if
7 Mr. Zuckerberg was using his email account? And
8 the answer to that question is yes. And, in fact,
9 we know he was in his email account in October
10 of 2010. So we know he was in there doing
11 something. We don't know what. We said is it
12 possible for you, Harvard, to tell us if
13 Mr. Zuckerberg deleted any of the emails on his
14 account? And they said no. We have no way to tell
15 what has been removed. All we can tell you is what
16 is there.

17 So, it is highly probable that Mr. Zuckerberg
18 has discussed the idea of Facebook and StreetFax
19 and his relationship with Mr. Ceglia with more than
20 just Mr. Ceglia himself. He may have addressed it
21 with his girlfriend, with his roommates, with
22 Eduardo Severin, with the Winklevosses, with --
23 there's a whole host of people.

24 THE COURT: Admissions.

25 MR. LAKE: Right. That are beyond the 176

1 purported emails that were between him and
2 Mr. Ceglia, not to mention from what I understand
3 from reading the declaration, they asked Harvard
4 for -- or search for the emails that were there.
5 They didn't ask for the deleted emails. As far as
6 I know, there may be a deleted email file --

7 THE COURT: I'm following you.

8 MR. LAKE: -- that they didn't ask for.
9 We don't know. It's impossible for us to know,
10 because the only person who has access to that is
11 Mr. Zuckerberg, and Mr. Zuckerberg is not going to
12 give us anything unless --

13 THE COURT: You're going to need to depose
14 him then.

15 MR. LAKE: Absolutely. We're going to
16 have to depose lots of people, because --

17 THE COURT: That's not in your request
18 here.

19 MR. LAKE: No. Because --

20 THE COURT: Because --

21 MR. LAKE: Here's the way I would lay this
22 out. First of all, we haven't had a Rule 26(f)
23 conference at all about --

24 THE COURT: I haven't mentioned that. I
25 thought I had ordered that --

1 MR. LAKE: We had attempted -- Mr. Hall
2 and Mr. Vacco attempted to meet and confer with
3 Mr. Snyder on June 6th and 7th. It was in
4 Mr. Hall's declaration. There was a letter that he
5 received on June 7th summarily denying any
6 discussion of the evidence of this case, so --

7 THE COURT: Well, that's not the point.
8 The point is both sides were under court order to
9 production proposed --

10 MR. LAKE: Right.

11 THE COURT: Rule 16(b) schedules.

12 MR. LAKE: And they didn't do it.

13 THE COURT: And I was not favored with
14 that.

15 MR. LAKE: I know. And I'm here to tell
16 you that I want to get this moving, and in order to
17 get to our 16(b) conference --

18 THE COURT: We're at it.

19 MR. LAKE: -- the first thing we need to
20 do is I think to have a 26(f) conference and
21 develop a protocol if necessary.

22 THE COURT: Maybe, maybe not.

23 MR. LAKE: In that regard by the way, your
24 Honor, I prepared an ESI, which is electronic
25 stored information, protocol. This protocol has

1 been used widely throughout the United States.
2 It's very detailed. It is different from Mr. Evans
3 and Mr. McGowan's, what they set forth in their
4 declaration. If I had an opportunity, like you, I
5 will sit down with whoever needs to be present and
6 take all the time we need, if we're going to get to
7 the ESI portion of this, do it now before we get to
8 the Rule 16(b) conference so we can give you a
9 discovery schedule that is workable, that is fair,
10 that is mutual, and that will drive to the core
11 issue in this case, and that is whether or not
12 there is a contract or a deal between Ceglia and
13 Zuckerberg. They say no. We say yes.

14 There's only two ways that we can prove that.
15 Number one is the original contract it itself. We
16 have it. We're willing to provide it and allow
17 them to do whatever testing they want under a very
18 strict set of protocols. Here's why.

19 THE COURT: That's where -- under a very
20 strict set of protocols agreed to by the parties or
21 ordered by the Court?

22 MR. LAKE: Well, I actually --

23 THE COURT: I mean, well, we talked about
24 that with Mr. Snyder. They said they have their
25 own protocol, don't worry about that, because

1 they're very good protocols.

2 MR. LAKE: Right.

3 THE COURT: And we run the risk that if we
4 don't do it right, the results of our reviews will
5 be struck down or nullified or excluded.

6 MR. LAKE: Well, that -- what they're
7 asking you to do is trust, and trust their experts
8 that they're --

9 THE COURT: As long as they don't destroy
10 the document, what's the harm in it? Let them take
11 their --

12 MR. LAKE: That's true for the original
13 document. For the electronic information, I'm
14 highly suspect, because we know that Mr. Zuckerberg
15 and his team are the most capable people in the
16 world at manipulating electronic information, and I
17 have no distrust for counsel. We met. We spoke
18 yesterday. It was amenable, professional. I have
19 no trouble. I have done an amazing amount of work
20 on Mark Zuckerberg, and all of the pleadings that
21 have been written so far have focused on the
22 character of Mr. Ceglia. My predecessors have not
23 elected to go down that road as far as how these
24 two compare with their veracity. So --

25 THE COURT: So as -- if we do launch

1 accelerated discovery relative to authenticity, I
2 now have to review that document, or you have to
3 sit with Mr. Snyder and his colleagues and
4 review -- has he seen it? Have you tendered it to
5 him before today, before this afternoon?

6 MR. LAKE: No, I just finished it this
7 morning.

8 THE COURT: Oh, okay.

9 MR. LAKE: I've been working hard, but I
10 did have to sit on a plane for a few hours
11 yesterday.

12 THE COURT: You're doing great.

13 MR. LAKE: The other reason we have
14 concern, and this is again something that I did
15 since I've been in the case is the case of In Re:
16 Facebook PPC Advertising Litigation, which came out
17 of the United States District Court for the
18 Northern District of California in San Jose. This
19 was a case that came out in -- just very recently
20 in December of 2010. It was not a published
21 opinion. But it has to do with the electronically
22 stored information that Facebook was involved with
23 in this case. And the judge in that case, which
24 were Judge Howard Lloyd wrote this opinion. They
25 talk about Rule 26(f) and what's called the Sedona

1 principles. And the Sedona principles --

2 THE COURT: I'm familiar with that.

3 MR. LAKE: Okay. Say that discovery --

4 THE COURT: I can't recite them to you,
5 but I know what they are.

6 MR. LAKE: I can paraphrase it for you.

7 It is that discovery is a party-driven process, not
8 a court-driven process. They've taken the position
9 in this case that discovery is going to be a motion
10 practice, motion, motion, motion, motion, and that
11 they want to continue to do that.

12 I would submit that under the Facebook case,
13 because of the reasons that Judge Lloyd stated --
14 and I can give you a copy of this opinion if you
15 would like -- the parties should meet and confer.
16 We need to decide what we need to do first. As you
17 know, there's been no discovery propounded in this
18 case at all. We don't know what they want other
19 than they want original computers, which cause me
20 grave concern for a couple reasons.

21 One is they'll contain irrelevant, inadmissible
22 evidence, and two, there may be privileged and
23 attorney work product on those computers. And I
24 have no faith that if I turn over a computer that
25 may have that information on it to my adversary in

1 this case of what could possibly happen. I think
2 that was the reason that --

3 THE COURT: No claw backs.

4 MR. LAKE: Right.

5 THE COURT: Well, technically that could
6 be required.

7 MR. LAKE: Yeah. We need to --

8 THE COURT: But in the meantime, the
9 damage is partially done.

10 MR. LAKE: It's done. It's done.

11 THE COURT: Because they've seen it.

12 MR. LAKE: Right. We can't have that.

13 What we need to do is find a way to get them what
14 they need to establish -- if I understand their
15 theory correctly the fraud occurred in 2009
16 or 2010. I think that's what Mr. Snyder just said.
17 We're claiming that the contract, the negotiation,
18 the work that was done was done in 2003 and 2004
19 including -- and you asked a very pointed question
20 that I made a note of, that was what was
21 Mr. Zuckerberg doing for StreetFax and why? And
22 the answer was he was programming, he was coding,
23 he was writing source. The next question that I
24 was hoping you would ask, but I'm going to raise
25 that issue is, what happened to that coding and

1 that programming and all of that source material?

2 THE COURT: I did ask that question. He
3 delivered it to Mr. Ceglia.

4 MR. LAKE: You know what else he did with
5 it?

6 THE COURT: I did ask that question. I
7 thought I did.

8 MR. LAKE: You know what else --

9 THE COURT: I meant to.

10 MR. LAKE: That is one of the things he
11 did with it. Guess what else he did with it?

12 THE COURT: He delivered it. Did he keep
13 a copy?

14 MR. LAKE: He may have used it to build a
15 platform for Facebook. If he did that, we're
16 entitled to discover that.

17 THE COURT: Out of the Streetscape thing?

18 MR. LAKE: If the information that was
19 being -- that was being derived by Mark Zuckerberg
20 at that time was used for Facebook, we have an
21 absolute right to know that, and we are entitled to
22 discover that. Because that --

23 THE COURT: Facebook is a derivative work
24 of Street Scape?

25 MR. SNYDER: It may be.

1 THE COURT: Maybe.

2 MR. LAKE: It is not a very far leap at
3 all --

4 THE COURT: But you have to --

5 MR. LAKE: -- to know that.

6 THE COURT: But your client has it.

7 MR. LAKE: Yeah, we have it.

8 THE COURT: So what is it that --

9 MR. LAKE: How do we know what they used
10 at Facebook until we -- we don't have Facebook's
11 information. We don't have their platform. We
12 don't have the source coding that they used.

13 THE COURT: You're saying that if you're
14 able to make a comparative of the original Facebook
15 code with the Street Scape code --

16 MR. LAKE: StreetFax.

17 THE COURT: StreetFax code that -- source
18 code, you would be able to see that it is, in fact,
19 a derivative, at least in part from it, is that
20 what your point is, and thus corroborating the
21 authenticity issue?

22 MR. LAKE: You may see that, yes. That's
23 an issue in this case. Absolutely it is.

24 THE COURT: Your former colleagues didn't
25 -- I mean your former counsel didn't raise that

1 point, but you are.

2 MR. LAKE: No, they didn't, but I am. The
3 other issue they didn't raise is the fact
4 Mr. Zuckerberg knew more people at Harvard that
5 were working on this project than just Mr. Ceglia.
6 We know that because we have emails --

7 THE COURT: Working on which project?

8 MR. LAKE: Both, the StreetFax project and
9 the Facebook project. So there could have been
10 communication between Mr. Zuckerberg and all of
11 those other people that concerned, not only
12 StreetFax, but also concerned Facebook, because it
13 was being done at the same time. And if it was the
14 same work that was being applied two different
15 places by multiple people, then limiting the scope
16 of discovery to 176 self-serving emails on the
17 Harvard server is far too narrow.

18 THE COURT: But the thrust of their motion
19 and I think, again -- pardon me if I'm a little
20 confused at this point -- and your agreement with
21 it is that the scientists will determine
22 authenticity. These other things you're talking
23 about are quite collateral?

24 MR. LAKE: Right. That's right.

25 THE COURT: So why do I need to be

1 authorizing discovery about Facebook source code to
2 make this comparative on the possibility that
3 indeed one was derived from the other as arguable
4 corroboration of the authenticity of the contract?
5 But if the science can produce the definitive
6 answer, then whether or not it's derivative or not
7 is irrelevant?

8 MR. LAKE: Which comes back to my original
9 point --

10 THE COURT: Is that a fair question?

11 MR. LAKE: It's a fair question. I'll
12 give you the answer.

13 THE COURT: Thank you.

14 MR. LAKE: The answer is, as Mr. Snyder
15 pointed out, if there is something on the original
16 document that was not in existence in April
17 of 2003, the ink that was used has a chemical in it
18 that was not introduced into printing until 2010,
19 right, lights out, ball game, got it. We don't
20 think that is going to be shown for the reason that
21 we believe in the veracity of Mr. Ceglia's story
22 and the authenticity of the contract. So step one
23 is to make that determination. If it is
24 dispositive, then I agree with Mr. Snyder. They
25 should talk about having this case dismissed and

1 moving on.

2 I don't think you're going to find that. I
3 think what you're going to find, and you've seen
4 this from the reports you've seen already, that the
5 paper, the ink, and everything else is consistent
6 with the timing of the negotiation and execution of
7 the contract. I think they're going to concede
8 that, and they almost did today, although
9 Mr. Snyder hedged at the end by saying well, he's
10 not conceding that that's actually his signature on
11 the contract. We're just conceding it's one that
12 looks like his. Okay. So, let's figure that out.

13 In order to do that, we're perfectly amenable
14 to have all the tests that are done. Here's what
15 my fear is, and I think you can do this also under
16 Rule 26(c) and when you decide where it's done, how
17 it's done, who's present, all of those sorts of
18 things, that's why I believe DLA Piper asked for a
19 neutral to do that. Because if we get a list of
20 tests, and the tests are -- we agree on who can do
21 the tests, then you can say, give me the original,
22 I'll give it to the expert, the expert can do all
23 the tests that you guys asked for. He can give you
24 his independent conclusions, and if it's
25 dispositive, case over.

1 Then comes to your next question. What if it's
2 not? Are you going to file a summary judgment,
3 because you're not going to win a summary judgment
4 because there's going to be a question of fact.
5 Well, our experts are going to be certain. They're
6 not going to change their minds -- we just heard
7 that -- no matter what the testing. If that's the
8 case, why allow them to test the contract at all?

9 THE COURT: I asked him that question.

10 MR. LAKE: And he said, well, no that's
11 not exactly true. We really would like to see if
12 there's more. Okay. Fine. Let's do that first.
13 Let's do it now. But let's make sure it's fair.

14 I was going to ask to do the same thing for
15 their contract, but now I don't need to because
16 theirs doesn't exist. That's step one. Because if
17 they're right, and this contract is conclusively
18 fraudulent, if it is dispositive of this case,
19 there's no need to take the second step. The case
20 is over. We all go home.

21 THE COURT: You would concede? You would
22 concede?

23 MR. LAKE: If it is unequivocal, yes.

24 THE COURT: You would withdraw, because --

25 MR. LAKE: I would have to. I don't want

1 to partake in a fraud on the Court.

2 THE COURT: Well, if you would --

3 MR. LAKE: That's not why I'm here.

4 THE COURT: But the point is that the
5 case, for all practical purposes, somehow somewhere
6 under the inherit power analysis would go away.
7 Okay.

8 MR. LAKE: How am I going to defeat that?
9 If all the experts agree that the paper that it was
10 written on was 2010 paper, yeah, case is over.
11 What I think you're going to see though is you're
12 going to have their experts that are going to be
13 unwilling to move from their position no matter
14 what evidence they see. And you're going to see
15 our experts who are going to give their fair and
16 accurate assessment and give their opinions.

17 An issue was raised actually today about that
18 and say how come plaintiff's experts haven't come
19 out and conclusively stated their position? And
20 the answer is twofold. Number one, they haven't
21 been deposed yet, so it's not required. And number
22 two, because they haven't concluded their testing,
23 because we have not been willing to do anything to
24 jeopardize the integrity of the original agreement
25 without permission of the Court, because we don't

1 want to be accused of manipulating the data or the
2 evidence.

3 THE COURT: I understand.

4 MR. LAKE: So how can they give a final
5 opinion until they finish their investigation?
6 That needs to be done first. I would submit to you
7 today that's as far as we go. We sit down, we
8 figure out what we're going to do with that
9 document so it's fair. Once that's done --

10 THE COURT: And is that something you can
11 do today while you're here, or do we --

12 MR. LAKE: Your Honor, I travel great
13 distance. I'm planning on spending a lot of time
14 here. I can do it today, tomorrow, Saturday.
15 Fourth of July it would be tough, but I'm even
16 willing to do that.

17 Then we come to the second step if that is
18 inconclusive. Because I don't think that either
19 party will prevail on a summary judgment unless
20 it's absolutely clean cut, which means that if
21 we're going to go to the authenticity issue, we
22 need to have a bifurcated trial. We need to cut
23 this down and not talk about all of the
24 discovery -- this is one of their fears, time,
25 delay, expense, litigating and discovering issues

1 beyond authenticity until that question is solved.
2 And I don't disagree with that. I don't think we
3 need to be talking about the legal ramifications of
4 the contract until we have a trier of fact, I would
5 submit a jury, to tell us if the contract is real
6 or not.

7 THE COURT: We're getting ahead of
8 ourselves. So far, if you're -- it sounds to me
9 like you're in basic agreement with Mr. Snyder,
10 which is that the science -- I'll use that -- or
11 the scientists, the experts, can give us a
12 definitive answer on authenticity --

13 MR. LAKE: I won't go that far, because I
14 don't know. I'm not an expert in this field. I
15 know they've retained great experts. We've
16 retained great experts. And I think --

17 THE COURT: Now I lost you. I thought --
18 I thought you just said that that's exactly what
19 they will do.

20 MR. LAKE: No. Here's what they're going
21 to say. Here's what I think they're going to say.

22 THE COURT: Oh, I know what -- I misspoke.
23 You're taking my use of the word authenticity as
24 more of a verb form perhaps than a noun. Whether
25 it's authentic or not, the experts will attempt to

1 give us an opinion. They will either agree or
2 disagree, and the methodology they will use is, for
3 want of a better term, and scientific, if you will,
4 Daubert qualified, scientific, reliable, accepted
5 within the field, methodology for making such
6 tests. Do you agree with that?

7 MR. LAKE: I agree with that.

8 THE COURT: Thank you. Now here's my
9 point in the interest of time.

10 MR. LAKE: Okay.

11 THE COURT: Therefore, except arguably for
12 the issue of handwriting samples, including
13 initialing samples, none of the other requests that
14 the plaintiff has proffered for which mutual
15 accelerated discovery should be granted would be
16 pertinent. Do you agree?

17 MR. LAKE: Not for the original document
18 itself, no.

19 THE COURT: Exactly. So -- so that's what
20 I'm trying to get to. If we're in agreement that
21 we need to attack the authenticity issue, then we
22 need to attack it primarily on the basis of
23 scientific methodology. And the only one of these
24 numerous mutual discovery requests that are
25 proffered here that seem arguably reasonably could

1 bear on that question is the issue of his
2 initialing, right?

3 MR. LAKE: Yes.

4 THE COURT: Thank you. So if I overruled
5 the request for serial accelerated discovery, but
6 grant it to the extent -- but grant your request
7 for mutual discovery, it would only be limited to
8 the handwriting samples.

9 MR. LAKE: If we're talking about the
10 original document only. If we go beyond that --

11 THE COURT: I think that's all we're
12 talking about here.

13 MR. LAKE: No. They have also asked for
14 all our computers.

15 THE COURT: Oh, the computers.

16 MR. LAKE: And what I'm saying is we can't
17 get to that until we solve the first problem.
18 Because if that's -- here's what's going to happen.

19 THE COURT: So your point is we only need
20 to attack the authenticity of the contract. We
21 don't even have to get into the computers or the
22 emails right now.

23 MR. LAKE: No. What we do is we sit down
24 with them and do a 26(f) conference, take a look at
25 my protocol together without the Court, following

1 the Sedona principles, and if it turns out not to
2 be dispositive on the original document, we come
3 back to you with a 26(f) conference and a 16(b)
4 hearing, and then we go after the emails and the
5 electronic ESI -- electronically stored information
6 portion of the case, because that's the
7 corroborating evidence to the original contract.
8 If it's unconclusive or inconclusive --

9 THE COURT: Inconclusive, right.

10 MR. LAKE: -- then that's the next step.

11 THE COURT: But if their experts conclude
12 it's an authentic document, we don't need to look
13 at the computer or the email.

14 MR. LAKE: That's right. Now we talk
15 about the legality of their agreement. What is --
16 what if --

17 THE COURT: Then we talk about whether or
18 not there's a cause of action for this -- I wanted
19 to ask him about it but I didn't in the interest of
20 time -- whether or not there's actually -- excuse
21 me, your cause of action, whether or not the
22 defendants are going to make a motion, which they
23 obviously don't want to do until this authenticity
24 issue is resolved, for failure to state a claim or
25 statute of limitations issues.

1 MR. LAKE: That's right. And that's
2 another legal issue that should be postponed.

3 THE COURT: Because, frankly, I'm not so
4 clear whether or not this complaint states a cause
5 of action under your partnership theory. I mean --

6 MR. LAKE: I can tell you in the last 48
7 hours I have not briefed that issue, your Honor.

8 THE COURT: Oh, I didn't expect you to.
9 But you remember your basic partnership law, you
10 have to have intent, you have to have conduct
11 consistent, you have to have joint operation, all
12 the usual common law indicia of partnership, none
13 of which are alleged in your complaint. I don't
14 understand why it's not just a breach of contract
15 action I guess is what I'm saying, but that's for
16 another discussion I suppose.

17 MR. LAKE: Like I said, your Honor, I
18 haven't drafted any of these pleadings.

19 THE COURT: I know. And we may still have
20 a second amended complaint because we're still
21 early here perhaps. But, all right. Thank you.

22 MR. LAKE: In the interest of time here's
23 what I would respectfully request.

24 THE COURT: Okay.

25 MR. LAKE: That their request for

1 expedited discovery be rejected other than a
2 protocol for the original contract itself.

3 THE COURT: Okay.

4 MR. LAKE: And that upon the conclusion of
5 that testing that, if necessary, we conduct our
6 16(b) hearing --

7 THE COURT: Well, further discovery.
8 We're conducting the 16(b). We're doing both.

9 MR. LAKE: Okay. Great. And in the
10 meantime we work on an electronically stored
11 information discovery protocol, and if we get to
12 the issue of --

13 THE COURT: Which would only be necessary
14 if -- if the results are inconclusive.

15 MR. LAKE: Correct.

16 THE COURT: In the sense that we have
17 dueling experts.

18 MR. LAKE: Correct. And with that
19 discovery, we -- if you would like, I have no
20 problem with this either, we just focus again on
21 the corroboration of the authenticity issue as
22 opposed to --

23 THE COURT: That would get into your other
24 requests.

25 MR. LAKE: That's right. So now we can

1 talk about what do we get -- because we want their
2 computers, we want their email. We want all the
3 things they want from us.

4 THE COURT: I follow you.

5 MR. LAKE: As long as it's good for them
6 and it's good for us, then it's good for me. And
7 that's what I would propose.

8 THE COURT: So we don't need -- you don't
9 see us moving forward at this time with any paper
10 discovery other than a protocol sort of -- not even
11 discovery, it's just protocol.

12 MR. LAKE: I think we should put together
13 a list of the witnesses that we intend to call when
14 it comes to testifying about the original document,
15 our experts, of course. We put together a list of
16 witnesses --

17 THE COURT: We're ahead of ourselves.

18 MR. LAKE: Yeah, that were involved with
19 this.

20 THE COURT: That will only be necessary if
21 the -- if we have contradicting opinions --

22 MR. LAKE: Right.

23 THE COURT: -- on authenticity.

24 MR. LAKE: But I think as lawyers we
25 should be doing that with the anticipation --

1 THE COURT: Well, I was hoping you were
2 going to do it, but I can see now, upon further
3 review, thank you very much for taking the time,
4 that the authenticity issue is tightly related to
5 the science, and the science can go forward, and
6 how it turns out is a question of time, and we'll
7 see.

8 MR. LAKE: Right. The only thing I do not
9 want to do is leave the contract in their hands
10 alone.

11 THE COURT: The contract.

12 MR. LAKE: The original document.

13 THE COURT: Well, you know, that's a good
14 question. That gets back to this independent
15 expert idea.

16 MR. LAKE: Right. We can have all our
17 experts there. I'm not saying preclude them from
18 having their experts submit what they want.

19 THE COURT: Why can't you observe the
20 proceeding?

21 MR. LAKE: That's what I mean. If our
22 experts are there, their experts are there, and
23 somebody's doing it, and we're all there together,
24 and it's being documented and where everybody is --

25 THE COURT: That's what I meant by a

1 protocol.

2 MR. LAKE: Yeah. Right.

3 THE COURT: Well, then --

4 MR. LAKE: But their proposed protocol I
5 think was --

6 THE COURT: If we did that, then the Court
7 doesn't need to designate its own expert. We could
8 just let them designate their experts, and your
9 people go out to -- what's the name of that Franz
10 company there?

11 MR. SNYDER: Stroz Friedberg. Your Honor,
12 we'd even be willing to come to a designated
13 location that the plaintiff suggests in Buffalo or
14 the environs, and our experts would go wherever the
15 contract is, and they need a couple of days, and
16 whoever wants to watch to their heart's content is
17 fine with us.

18 UNIDENTIFIED VOICE: Your Honor, we have
19 an office in Ithaca, which is close to where
20 supposedly this document is located. We can
21 accommodate the plaintiff. He doesn't want it to
22 leave that county, we're just one county over.

23 MR. LAKE: That's great, and they can take
24 their samples. They can do what they want to do.
25 I just don't want to walk down this road later and

1 have them say this contract is -- there's something
2 wrong with it, because it's been changed. There is
3 a hole in it or there's something that is on here
4 now, and we say wait, it's because --

5 THE COURT: You can photograph it. You
6 can preserve its integrity by having a legal
7 photographer take a picture of the thing. You can
8 have a -- I don't know, sort of an escrow agent
9 observe the proceedings --

10 MR. LAKE: Exactly.

11 THE COURT: -- I suppose and file an
12 affidavit that based on his or her observations the
13 protocol was satisfied, the document was not
14 tampered with, and that person escorts somebody,
15 the custodian, perhaps the plaintiff himself, back
16 to the safe deposit box and observe that it's put
17 back under lock and key.

18 MR. LAKE: That's right.

19 UNIDENTIFIED VOICE: Your Honor, we have
20 an expert from RIT (indiscernible).

21 THE COURT: Well, given the importance of
22 this document, I'm starting to become a little
23 concerned about the security aspects of this whole
24 thing.

25 MR. LAKE: Believe me, me too.

1 THE COURT: Well, I mean, there's a lot at
2 stake here.

3 MR. LAKE: Yes. That's an understatement.
4 We're not talking about just money. We're talking
5 about potential criminal repercussions, so this
6 document is very, very important to us. And to
7 maintain its integrity is equally important. We're
8 not trying to hide it. We're willing to share it
9 so we can get to the bottom of it.

10 THE COURT: I know, but we don't want any
11 tampering. We don't want any loss.

12 MR. LAKE: It's not that I distrust the
13 lawyers or anyone. It's just -- I just distrust
14 everyone.

15 THE COURT: No, no, it's not a matter of
16 distrust. It's just a matter of reality. We've
17 got to be concerned about the security aspects of
18 this thing, and I'll make no comment on whether the
19 security arrangements that have been made are
20 adequate. I don't know. I mean, one could make
21 the argument --

22 MR. LAKE: We're doing the best we can.
23 That's why it's been saved.

24 THE COURT: Well, there are other ways to
25 secure something. There are commercial security

1 agencies that are -- probably have higher levels of
2 security than a bank safe deposit boxes.

3 MR. LAKE: That's a good point. Now
4 you're scaring me.

5 THE COURT: Didn't mean to.

6 MR. LAKE: The point is this.

7 THE COURT: I don't think I could scare
8 you, you're pretty big.

9 MR. LAKE: I'm not that scared.

10 THE COURT: I would be concerned. You've
11 got these fantastic movies with all this apparatus,
12 Tom Cruise comes down like a spiderman and --

13 MR. LAKE: Right, exactly.

14 THE COURT: So we don't --

15 MR. LAKE: That's why Mr. Snyder and I
16 could sit down, talk about how much time we have to
17 do it, where we want to do it, what test they want,
18 who's going to be there.

19 THE COURT: I'm following you fine.

20 MR. LAKE: We can start doing that today,
21 tomorrow --

22 THE COURT: Thank you.

23 MR. LAKE: I would ask you one thing just
24 as far as timing goes.

25 THE COURT: Yes.

1 MR. LAKE: Mr. Argentieri is not here
2 today, as you know. It's okay for me to be here.
3 He's on the west coast. He returns on July 12th.

4 THE COURT: Didn't fully expect him to be
5 here. Would have liked to have met him.

6 MR. LAKE: Here's the reason I mentioned
7 that.

8 THE COURT: He's on the west coast, you're
9 on the east coast.

10 MR. LAKE: I know. It's funny how things
11 work out. Mr. Argentieri has access to the
12 document, and therefore -- unless he makes a
13 special trip back, then I would respectfully
14 request that whatever --

15 THE COURT: He's the only one that has
16 access? He's the owner of the box, is that it?

17 MR. LAKE: That's my understanding, yes.
18 His client at the time --

19 THE COURT: Well, as a practical matter,
20 we're not ready to start testing this afternoon or
21 tomorrow, are we, Mr. Snyder?

22 MR. SNYDER: We're ready to test as soon
23 as the document can be made available for testing.

24 MR. LAKE: Right.

25 THE COURT: Really?

1 MR. SNYDER: Yes.

2 THE COURT: When will Mr. Argentieri --

3 MR. LAKE: July 12th.

4 THE COURT: July 12th.

5 MR. LAKE: Right. That's a week -- or
6 it's a week and a half.

7 THE COURT: Well, I don't know. He may
8 have to make a special trip, sorry to say.

9 MR. LAKE: Well --

10 THE COURT: I mean, it's a --

11 MR. LAKE: It's not that --

12 THE COURT: It's a twist.

13 MR. LAKE: I'm bringing it to the Court's
14 attention. I don't want anyone to be surprised.

15 THE COURT: Well, thank you. That's why
16 we're here. Thank you. I appreciate it.

17 MR. LAKE: He's there. If he doesn't have
18 to make a special trip --

19 THE COURT: Well, he may have to.

20 MR. LAKE: I would say let's make a list
21 of timing and see what we can do and get it done.

22 MR. SNYDER: Your Honor, may I be heard
23 briefly?

24 THE COURT: Yes, I just want to finish up
25 with Mr. Lake.

1 MR. SNYDER: I'm sorry.

2 THE COURT: So you and I are in agreement
3 that if I -- that I can grant this motion limited
4 to the document and allow limited mutual discovery
5 pertinent -- pertaining to handwriting and
6 initialing samples --

7 MR. LAKE: Correct.

8 THE COURT: -- during the relevant period.

9 MR. LAKE: Yes.

10 THE COURT: From the relevant period, if
11 they're available, and again we don't know.

12 MR. LAKE: That's true. If they're not,
13 then I would like a good explanation for that, but
14 I would imagine they are.

15 THE COURT: Now on these emails with
16 Mr. Zuckerberg's access to them at Harvard, how do
17 we secure those going --

18 MR. LAKE: We put a litigation hold. We
19 sent that to Harvard so that they wouldn't be
20 touched.

21 THE COURT: Oh, are they compliant with
22 that now?

23 MR. LAKE: Don't know.

24 THE COURT: Do they have the ability to
25 comply with it?

1 MR. LAKE: The only person who can do
2 anything with those emails is Mr. Zuckerberg. He's
3 the only one that has access to that account.

4 THE COURT: So a hold to Harvard doesn't
5 do anything, because technically they can't --

6 MR. LAKE: Well, they're not going to shut
7 down his account, and they're not going to delete
8 all the emails.

9 THE COURT: Say that again, they're not
10 going to shut his account, but they're -- how could
11 they prevent Mr. Zuckerberg from doing anything
12 adverse?

13 MR. LAKE: They can't.

14 THE COURT: That's the point I'm getting
15 at.

16 MR. LAKE: If Mr. Zuckerberg does, it goes
17 back to my point, and that is they're giving us all
18 the things that serve their case, but we have no
19 idea what he's deleted, and we can't know that.
20 It's impossible for us to know, because we can't
21 get access to that.

22 THE COURT: Thank you.

23 MR. LAKE: Yes.

24 THE COURT: Mr. Snyder, rebuttal?

25 MR. SNYDER: Your Honor, could we take a

1 bathroom break?

2 THE COURT: Sure. You want me to wait
3 here while you --

4 (Short recess was taken.)

5 THE COURT: Okay. Mr. Snyder, you heard
6 the other side, and you can see what the Court's
7 interested in possibly doing here, and that is
8 granting and denying the motion in part limited to
9 the inspection testing of the alleged original
10 contract.

11 MR. SNYDER: Yes, your Honor.

12 THE COURT: Subject to some kind of a
13 protocol which you'd have to stay this -- you know,
14 meet and confer, if you will, on the protocol if
15 you still -- if that's -- if you agree with that.
16 If not, then tell me why not. Subject to the
17 security issue, I'll call it the security issue, of
18 the document, and granting very limited mutual
19 discovery relating to handwriting samples slash
20 initial samples from Mr. Zuckerberg. And I am
21 concerned about these -- the integrity of those
22 Harvard emails.

23 MR. SNYDER: Let me address that directly.

24 THE COURT: If you can address that too,
25 and then also -- and maybe you can address this

1 right up front is that if the conclusions of the
2 experts are in equipoise, in other words if they're
3 not -- if the plaintiff's experts don't effectively
4 concur with -- substantially concur with the
5 defendant's experts, who will presumably in this
6 hypothetical -- it's a hypothetical -- will find
7 that the document is not authentic, that you would
8 precind (sic) from a motion to dismiss based on
9 fraud, or you would push ahead?

10 MR. SNYDER: Shall I answer that one?

11 THE COURT: Yes, answer that one first.

12 MR. SNYDER: Your Honor --

13 THE COURT: Maybe it's not a fair
14 question, because it's a possibility you hadn't
15 thought of.

16 MR. SNYDER: No, it's a fair question. If
17 our expert -- if our experts conclude that the
18 contract and the emails -- because I want to
19 address the critical omission in Mr. Lake's
20 presentation. He's running a million miles away
21 from those bogus emails. And the fraud in this
22 case that is represented by those emails is as
23 serious, and we need to test that as well.

24 THE COURT: We do, but only if the
25 document -- if the document is unauthentic, you

1 don't need to look at the emails, do you?

2 MR. SNYDER: With all due respect I
3 strenuously disagree --

4 THE COURT: Why? I don't get it.

5 MR. SNYDER: -- for the following reason.
6 In the event that the forensic tests, because he
7 has done the fraud well enough to avoid scientific
8 detection, in the event that he's done that, but
9 the emails turn out to be demonstrably
10 scientifically fraudulent, concocted this year for
11 the amended complaint, the case would still be
12 dismissed summarily under the Court's inherent
13 power.

14 THE COURT: Oh, I see.

15 MR. SNYDER: Yes, your Honor. And so it
16 is critical to our motion --

17 THE COURT: So even if he actually has --
18 there is this agreement for -- to establish a
19 purported partnership in Facebook, or a contract
20 wherein, as a result of this modest funding of
21 Mr. Zuckerberg's efforts collateral to the Street
22 Scape project, Mr. Zuckerberg wisely or unwisely
23 inked in a provision or signed a document that a
24 court conceivably -- a jury could conceivably find
25 was a contract for 50 percent ownership in this --

1 in this now successful company, you would say that
2 if he concocted the emails, which he then arguably
3 didn't have to do, but if he did, the case would be
4 dismissed.

5 MR. SNYDER: The premise of the question I
6 disagree with.

7 THE COURT: Is that your point?

8 MR. SNYDER: The premise of the question I
9 disagree with, your Honor.

10 THE COURT: Okay.

11 MR. SNYDER: There is no legitimate,
12 authentic contract that Mark Zuckerberg ever signed
13 in his entire life, much less in 2003, with this
14 plaintiff concerning Facebook. There's no question
15 on this earth that he never signed a contract with
16 Paul Ceglia that had anything to do with Facebook,
17 period. If, however, when he manufactured,
18 doctored, cut and paste a bogus document to make it
19 appear as if this was a Facebook contract, and if
20 this fraud is such that it will evade scientific
21 detection at this early stage of the litigation, if
22 he did that, but then concocted bogus emails, which
23 he did --

24 THE COURT: Which were scientifically
25 detected.

1 MR. SNYDER: Correct. That's -- to use
2 Mr. Lake's phrase -- lights out. It doesn't mean
3 the contract is authentic. The contract is a fraud
4 whether we prove it scientifically or otherwise.
5 But if he concocted emails to bolster, support --

6 THE COURT: By inductive reasoning.
7 Fraudulent emails, therefore fraudulent contract.

8 MR. SNYDER: Fraudulent emails, therefore
9 case over, because he's committing a fraud on the
10 court.

11 THE COURT: That's my point.

12 MR. SNYDER: Yes, but there never was --
13 yes, but there never was -- the premise of your
14 question was, your Honor, even if Mr. Zuckerberg
15 inadvertently or improvably signed, he never did
16 sign anything with this man relating to Facebook
17 ever. And there is no question on earth about
18 that. Mr. Zuckerberg is as certain of that as he
19 is as certain of anything. However --

20 THE COURT: If your experts -- if your
21 experts determine that indeed the contract is
22 authentic and Mr. Zuckerberg, whether wisely or
23 unwisely, put his initials on that first page, you
24 would argue that if the subsequent downstream
25 emails that were created by the plaintiff for

1 whatever reasons, thinking he needed to bolster his
2 position, and he unwisely concocted and fabricated
3 emails in conjunction with this lawsuit, then even
4 if he had a winning hand, he lost it by virtue of
5 the concoction of the subsequent emails, that's
6 your point.

7 MR. SNYDER: On that hypothetical, which
8 is fact --

9 THE COURT: That's all I was asking you.

10 MR. SNYDER: On that hypothetical, which
11 is factually not supportable. It doesn't --

12 THE COURT: We don't know yet.

13 MR. SNYDER: Well, we know. And
14 Mr. Zuckerberg has sworn to this Court.

15 THE COURT: I don't. And neither do your
16 experts, because they haven't seen the original.

17 MR. SNYDER: Our experts have seen a copy,
18 and that was enough for them to conclude that it
19 was an amateurish forgery.

20 THE COURT: Well, then we don't need to
21 test the original.

22 MR. SNYDER: We do need to test the
23 originals.

24 THE COURT: Well, there you go.

25 MR. SNYDER: Your Honor, Mr. Lake is --

1 THE COURT: You get my point?

2 MR. SNYDER: Yes. The emails are critical
3 to his complaint. The emails are fraudulent, and
4 it would be -- we submit it would be fundamentally
5 unfair for him to avoid forensic testing of the
6 instruments of his fraud which contributed to the
7 amended complaint.

8 THE COURT: You want to do both.

9 MR. SNYDER: It is fundamental to our
10 motion that we do both.

11 THE COURT: Is there any possibility of
12 spoliation as to these emails?

13 MR. SNYDER: None.

14 THE COURT: They've already been stored,
15 haven't they?

16 MR. SNYDER: Belt and suspenders. Harvard
17 University is --

18 THE COURT: No, no. I'm talking about his
19 emails. The ones that you want to test. Haven't
20 they all been lodged with a document security
21 expert or somebody?

22 MR. SNYDER: Mr. Ceglia and his experts
23 have identified a number of computer files and hard
24 drives and the like which contain instruments of
25 his fraud, and we want and have asked this Court to

1 direct --

2 THE COURT: I thought they had all been
3 turned over is my point.

4 MR. SNYDER: They're being held by their
5 expert.

6 THE COURT: That's right. So is there any
7 realistic possibility of Mr. Ceglia getting at them
8 to destroy them, to destroy evidence basically?

9 MR. SNYDER: The ones he's turned over to
10 the expert I think are in safe hands with the
11 expert.

12 THE COURT: That's my point.

13 MR. SNYDER: Whether there are others that
14 he hasn't turned over, we know at a minimum his
15 parents' computer has not been turned over, and he
16 has told the press --

17 THE COURT: He turned over his alleged
18 computer.

19 MR. SNYDER: He has turned over a variety
20 of electronic media which he's identified.

21 THE COURT: I thought your point is he
22 turned over his computer, but not the one in his
23 parents' home.

24 MR. SNYDER: What he's turned over is 169
25 floppy discs, 1,075 CDs, one laptop computer, and

1 the associated hard drive, and an image of a second
2 hard drive.

3 THE COURT: The only hardware that we're
4 not accounting for is the one that he acknowledges
5 is lodged with his parents and may contain relevant
6 information.

7 MR. SNYDER: Yes, unless one of these
8 images of a second hard drive is that parents'
9 computer, we do not know. It is fundamental to our
10 motion and fairness that we be entitled now, at the
11 same time we test the original document in the safe
12 deposit box, that we are able to forensically test
13 the computers and electronic media in his
14 possession, custody and control, because there are
15 tests that can be done that we believe can identify
16 and establish that these emails are bogus, that
17 they don't -- that these Word documents rather is
18 bogus.

19 THE COURT: But you agree that if their
20 experts throw in the towel in effect and say this
21 is an unauthentic document as Mr. Lake
22 acknowledges, for example, that the ink or the
23 paper is post 2003, 2004, you would stop there.
24 You would say, Judge, Mr. Lake would stop there
25 too.

1 MR. SNYDER: No, your Honor. I think with
2 all due respect both for creating the full
3 record --

4 THE COURT: Yes.

5 MR. SNYDER: -- here --

6 THE COURT: Yes.

7 MR. SNYDER: -- it is fundamentally
8 important, critical, that the electronic testing of
9 the computer files and electronic media occur. For
10 example, what software --

11 THE COURT: Simultaneously with the
12 document.

13 MR. SNYDER: Simultaneously. What
14 software was used to create the documents? Did it
15 exist in 2003?

16 THE COURT: Yeah.

17 MR. SNYDER: What's the manufacture dates
18 of the media? Did they exist in 2003?

19 THE COURT: I can understand all these,
20 sure.

21 MR. SNYDER: And then critically there is
22 metadata analysis that might be able to be done on
23 this floppy disc. Unfortunately, the emails aren't
24 on a server. If they were on an actual server the
25 way Mr. Zuckerberg's emails are on a server --

1 THE COURT: Somebody could get at them.

2 MR. SNYDER: The metadata would be much
3 more plentiful.

4 THE COURT: Accessible.

5 MR. SNYDER: And accessible. But there
6 may be metadata on these floppy discs on which
7 these Word documents reside on which he cut and
8 paste emails --

9 THE COURT: I'm sure that -- I understand
10 exactly what you're getting at.

11 MR. SNYDER: And that's not going to --

12 THE COURT: I guess it's just a matter
13 of -- I'm trying to be practical and expeditious
14 here at this point. If we don't have to do
15 something, why do it.

16 MR. SNYDER: We critically have to do it.
17 And I think the email forensic testing is as
18 important, as important, as testing of the
19 contract. And we would be deprived the
20 opportunity, because we've established more than a
21 prima facie case. Your Honor, we've submitted
22 expert affidavit after expert affidavit --

23 THE COURT: I know. I know.

24 MR. SNYDER: -- on this point.

25 THE COURT: Relax for a second. So the

1 only piece of hardware I have to be concerned about
2 if I agree with you that you ought to be permitted
3 to do what you just wanted to do that you don't
4 have access -- that isn't accounted for -- I'll use
5 that term loosely -- is the computer that's sitting
6 in the parents' home?

7 MR. SNYDER: I would say that Mr. Ceglia
8 should be directed that any -- anything -- any
9 computer or electronic media in his possession,
10 custody, or control be made available, because we
11 need to be sure that --

12 THE COURT: There could be others?

13 MR. SNYDER: There could be others, and so
14 that he's subject to this Court's order, and we
15 know he's acted responsibly.

16 THE COURT: How do we know that he's
17 turning over everything that's out there?

18 MR. SNYDER: We don't.

19 THE COURT: We don't.

20 MR. SNYDER: But the emails are critical
21 to his so-called partnership counts.

22 THE COURT: Did he say exactly for sure
23 that there are relevant emails in the computer at
24 the parents' home?

25 MR. SNYDER: Yes. May I approach, your

1 Honor? I can show you the article.

2 THE COURT: Oh, it's in the -- is it in
3 your papers.

4 MR. SNYDER: It's in our papers, but I can
5 show your Honor the article.

6 THE COURT: I remember, but I don't think
7 I can get at it that quickly.

8 MR. LAKE: The quote's actually by Mr.
9 Brownly.

10 THE COURT: Sorry. I heard somebody
11 speak. Mr. Lake, was that you?

12 MR. LAKE: I haven't seen what he's showed
13 you, but I think he's showing you a Wellsville news
14 article in which Mr. Brownly spoke, not Mr. Ceglia.

15 MR. SNYDER: Ceglia told the Daily
16 reporter the computers that the emails were on were
17 at his parents' house.

18 THE COURT: Yes, it's hearsay.

19 MR. LAKE: It doesn't say it's his
20 parents' computer.

21 THE COURT: I didn't mean to suggest that
22 it was his parents' computer. I had the impression
23 it was his computer that happened to be at his
24 parents' home.

25 MR. LAKE: Right. I think Mr. Snyder's

1 request was for Mr. Ceglia's --

2 THE COURT: I understood it that way.

3 MR. LAKE: I think he's requesting

4 Mr. Ceglia's parents' computer though.

5 THE COURT: Oh, I'm sorry. Thank you.

6 MR. LAKE: That's what I think the --

7 THE COURT: You want them all, is that it?

8 MR. SNYDER: Any computer in his
9 possession, custody, control over which he has
10 dominion we believe should be subject to the order.
11 In addition to --

12 THE COURT: We're talking about a lot of
13 ground here. We really are -- you're talking about
14 any computers to which he had access. It could be
15 computers at the public library.

16 MR. SNYDER: Possession, custody, or
17 control.

18 THE COURT: Well, I don't know that he has
19 custody, possession, or control over a computer
20 that belongs to his parents.

21 MR. SNYDER: If he used that computer to
22 create these emails according to him, we should
23 have access to that computer. That's the
24 limiting --

25 THE COURT: I don't want to quibble with

1 you, but it doesn't sound like custody, possession,
2 or control. You know, such limited access, is it
3 really possession at that point? We could argue
4 about it.

5 MR. SNYDER: In any event, your Honor --

6 THE COURT: I understand the point. I
7 understand your point. You're trying to sweep as
8 broadly as you can.

9 MR. SNYDER: But to not test the
10 electronic media and computers which contain the
11 instruments of his fraud --

12 THE COURT: Let's just call it the
13 electronic evidence.

14 MR. SNYDER: The electronic evidence.

15 THE COURT: Thank you.

16 MR. SNYDER: And we have made more than a
17 prima facie showing of an entitlement to expedited
18 target of discovery there, which can be done in a
19 way that is --

20 THE COURT: How about timing. Different
21 experts working on the electronic evidence versus
22 the hard copy evidence?

23 MR. SNYDER: We can do everything in 30
24 days.

25 THE COURT: Well --

1 MR. SNYDER: Upon receipt of the -- of the
2 evidence.

3 THE COURT: One doesn't depend on the
4 other?

5 MR. SNYDER: No. The contract can be done
6 in two days, and they can observe it, they can
7 photograph it, they can take notes, they can have
8 witnesses.

9 THE COURT: How are we going to do that in
10 a way that preserves the integrity of the document
11 that's satisfactory to plaintiff as well?

12 MR. SNYDER: Your Honor, I don't think
13 there's any question --

14 THE COURT: Do you need to sit down --

15 MR. SNYDER: No.

16 THE COURT: -- over dinner tonight --

17 MR. SNYDER: No.

18 THE COURT: -- at Rue Franklin or wherever
19 and get this hammered down?

20 MR. SNYDER: No, your Honor.

21 THE COURT: No.

22 MR. SNYDER: Because the testing that is
23 done, ink extractions, toner extractions, paper
24 extractions are accepted forensic techniques --

25 THE COURT: I'm sure they are.

1 MR. SNYDER: -- that don't destroy the
2 integrity of the document at all.

3 THE COURT: But I'm just saying, how long
4 does it take? Okay.

5 MR. SNYDER: And will take a matter of a
6 day, at most two, all of our document experts.

7 THE COURT: But you agree he can send a
8 representative?

9 MR. SNYDER: We welcome a representative.

10 THE COURT: That's my point. Don't we
11 need to set that forth in writing so it's
12 stipulated and --

13 MR. SNYDER: What I would say --

14 THE COURT: I can approve it or something.

15 MR. SNYDER: What I would say is the Court
16 should order on or before July 8th the document be
17 made available at a designated location, whether
18 it's RIT, or whether our offices in Ithaca, or a
19 well-lit conference room at the bank, at which time
20 our experts will have a two-day period between the
21 hours of 9:00 a.m. and 5:00 p.m. with a one-hour
22 lunch break --

23 THE COURT: They could conduct this
24 testing in the bank?

25 MR. SNYDER: They could bring their

1 equipment to a conference room if they had to.

2 THE COURT: Really?

3 MR. SNYDER: In other words, whatever is
4 convenient.

5 THE COURT: They don't have to take it to
6 a laboratory or anything like that?

7 MR. SNYDER: It would be preferable for
8 one of our experts to bring it to their location.

9 THE COURT: I don't have a problem
10 ordering that as long as it is done in a way that
11 satisfies the plaintiff that they have somebody
12 that observes and protects the physical existence
13 of this document. I mean, even to the extent of
14 having a security officer armed. I mean, you
15 know --

16 MR. SNYDER: Your Honor, we've been asking
17 for 365 days --

18 THE COURT: This is not your typical bank
19 fraud case.

20 MR. SNYDER: We've been asking for one
21 year to see this contract. We'll look at the
22 contract and examine it wherever it is.

23 THE COURT: I was going to ask you about
24 that, but I guess I won't, and that is why did you
25 wait so long to bring this motion?

1 MR. SNYDER: Well, it was the --

2 THE COURT: After two hours I should have
3 already asked you that.

4 MR. SNYDER: It was the amended complaint,
5 your Honor.

6 THE COURT: Which is essentially the same
7 thing.

8 MR. SNYDER: And the amended complaint
9 contained these fraudulent allegations --

10 THE COURT: It's still the same document.

11 MR. SNYDER: -- about the emails, and at
12 that point we determined that --

13 THE COURT: I'm just curious, why did you
14 wait until after Judge Arcara ruled? Why couldn't
15 you have asked for immediate discovery on the
16 authenticity issue?

17 MR. SNYDER: We believed that waiting for
18 a ruling on the remand was the appropriate
19 procedural avenue, rather than making a motion
20 while the jurisdiction of the case was still up in
21 the air.

22 THE COURT: The discovery would have been
23 valid in both courts though. I mean, if you were
24 concerned about his fraudulent behavior, sort of
25 nip it in the bud.

1 MR. SNYDER: We were concerned from day
2 one about the fraudulent behavior.

3 THE COURT: I know. I'm just curious why
4 you didn't bring the motion immediately if it was
5 such a big issue.

6 MR. SNYDER: We were waiting for the
7 judge's ruling.

8 THE COURT: But you didn't need that.
9 Still would have been entitled to discovery. Could
10 have asked the Court for permission.

11 MR. SNYDER: Yes, your Honor.

12 THE COURT: Just curious.

13 MR. SNYDER: The --

14 THE COURT: Anyway -- so you really don't
15 have a good answer for that.

16 MR. SNYDER: I do. We believed it was
17 appropriate to wait until Judge Arcara decided.

18 THE COURT: Because you thought you
19 couldn't do it, or it would be disrespectful to the
20 judge to ask for permission to do this authenticity
21 issue immediately?

22 MR. SNYDER: We knew that it would be
23 contested, and we thought that before the Court
24 determined its jurisdiction, it was not appropriate
25 to burden the Court with motion practice. That was

1 the decision that we made.

2 THE COURT: Okay. Maybe. Considering
3 what's at stake, I'm not sure I agree with you.
4 But that's beside the point. I'm just curious.

5 MR. SNYDER: And we didn't think the fraud
6 would be any less ripe upon ruling -- that ruling
7 than before.

8 THE COURT: Well, it tends to go to the
9 reason for the -- I mean, I'm satisfied that we
10 probably need to go forward here. But as we were
11 thinking about it, it just struck me, if you were
12 concerned about spoliation or more tampering, well
13 then why didn't you bring the motion immediately
14 contemporaneous with the removal?

15 MR. SNYDER: We did upon filing -- we did
16 immediately send a preservation notice to
17 Mr. Ceglia and his lawyers, and in addition, your
18 Honor, it was the filing of the amended complaint
19 and the allegations about these emails that are
20 fraudulent emails that are --

21 THE COURT: Really piqued your interest.

22 MR. SNYDER: Made it clear that --

23 THE COURT: Aroused your concerns.

24 MR. SNYDER: Made it clear that immediate
25 intervention was necessary.

1 THE COURT: All right. I gotcha. Thank
2 you. That's a fair answer. Thank you.

3 MR. SNYDER: So in terms of the Harvard
4 emails, your Honor expressed concern about those.

5 THE COURT: Yes, please.

6 MR. SNYDER: Those are safe and secure
7 with belt and suspenders. First, Harvard
8 University has preserved and is preserving those;
9 second, as we set forth in our papers, our motion
10 papers, Stroz Friedberg imaged, that is took
11 electronic photographs and images of the contents
12 of the Harvard server as it relates to
13 Mr. Zuckerberg --

14 THE COURT: So they can audit any
15 further --

16 MR. SNYDER: Correct.

17 THE COURT: -- not tampering, but attempt
18 to modify --

19 MR. SNYDER: Yes.

20 THE COURT: -- in any way shape or form.

21 MR. SNYDER: Yes. And that image is the
22 image from which the 176 emails were printed.

23 THE COURT: So you're willing to give the
24 plaintiff a copy of that image?

25 MR. SNYDER: No, your Honor, because

1 that's Mark Zuckerberg's emails to his professors,
2 to his parents, and to everyone under the sun about
3 his entire life. That was his personal email
4 account that he used. What we are prepared to give
5 him in a sequenced fashion are every single email
6 to and from the plaintiff and his confederates at
7 StreetFax. Now what's interesting is --

8 THE COURT: But you don't know -- but
9 there are no -- he had access, but your papers
10 point out that there was no actual modification,
11 deletion, or tampering with the existing emails.
12 That there was a perception that three had been
13 manipulated --

14 MR. SNYDER: No, that was nonsense.

15 THE COURT: -- but it turns out not.

16 MR. SNYDER: That was nonsense, your
17 Honor. Every image of the Harvard computer --

18 THE COURT: But they don't know that,
19 because they haven't seen the evidence that
20 establishes that they were not tampered with.

21 MR. SNYDER: There's no evidence of
22 tampering. There's only speculation.

23 THE COURT: You say so because your expert
24 says so.

25 MR. SNYDER: Your Honor, they haven't made

1 any showing, no prima facie showing, no threshold
2 showings. It's rank speculation that there's any
3 so-called tampering.

4 THE COURT: I'm just pointing out as a
5 fact. I'm not making an argument for them,
6 counsel. I'm just pointing out as a fact, as
7 Mr. Lake sits there and as I sit there, we have to
8 take your expert's word for it.

9 MR. SNYDER: You have to take the sworn
10 testimony of Stroz Friedberg. Mr. Stroz --

11 THE COURT: That's all I'm pointing out.

12 MR. SNYDER: Mr. Stroz is a former FBI
13 agent. Mr. Friedberg is the former assistant
14 United States attorney, and they have sworn to this
15 Court that they took an image of the Harvard
16 server, and Mr. Zuckerberg had 176 emails to and
17 from the plaintiff.

18 THE COURT: Is there any way for him to
19 get any access to anything from the expert that
20 would give them comfort that, in fact, they didn't
21 make a mistake, and they're not being especially
22 excessively loyal to your side of the case?

23 MR. SNYDER: There's no evidence, your
24 Honor. There's no even threshold showing that
25 that's the case. There's only conjecture,

1 speculation, and innuendo as compared to sworn
2 testimony by forensic experts that it is not so.

3 THE COURT: Okay.

4 MR. SNYDER: So the Harvard emails are
5 secure, and -- and are not --

6 THE COURT: And any further accessing of
7 the emails by Mr. Zuckerberg is being monitored?

8 MR. SNYDER: Yes.

9 THE COURT: And the -- because of the
10 image, post -- if it turns out that Harvard reports
11 further accessing by Mr. Zuckerberg, the expert
12 then can go in and take another look and see what
13 changes were made.

14 MR. SNYDER: Yes, your Honor.

15 THE COURT: But then how do we get to see
16 them and know that there were changes and what
17 changes were made?

18 MR. SNYDER: Your Honor, we have the 176
19 emails printed out.

20 THE COURT: Yeah.

21 MR. SNYDER: There's no evidence that
22 there are any other emails on that server.

23 THE COURT: So it's really an exercise in
24 futility -- I mean, it just doesn't make any
25 difference.

1 MR. SNYDER: Exactly, your Honor.

2 THE COURT: Okay.

3 MR. SNYDER: But the thing I think is
4 important to emphasize --

5 THE COURT: The body of knowledge that's
6 relevant is already captured --

7 MR. SNYDER: Yes, your Honor.

8 THE COURT: -- and there's nothing.

9 MR. SNYDER: Preserved for all time.

10 THE COURT: Thank you.

11 MR. SNYDER: I think it's critical to
12 underscore, your Honor, that Mr. Lake is urging
13 this Court to not order testing of the computers
14 and electronic media that relates to the fraudulent
15 emails. And that is not surprising, because those
16 emails were concocted, not only for this lawsuit,
17 but in this calendar year for this lawsuit, because
18 they were not attached to, referenced in the first
19 complaint.

20 THE COURT: Okay.

21 MR. SNYDER: And so what we're requesting
22 is expedited discovery in the next 30 days or 30
23 days after production of the relevant evidence of
24 both the original document, which he calls a
25 contract, and -- to be observed by whomever the

1 plaintiff designated or wishes or to be recorded
2 however he wishes, and secondly, the immediate
3 production of both the electronic media and
4 computers specifically identified by the plaintiff
5 in his papers, that is, the 169 floppy discs, the
6 1,075 CDs, the one laptop, associated hard drive.

7 THE COURT: 160 -- I know it's in here
8 somewhere.

9 MR. SNYDER: It's 169 floppy discs.

10 THE COURT: Right.

11 MR. SNYDER: 1,075 CDs, one laptop
12 computer, and the associated hard drive. And an
13 image of a second hard drive. That's the specific
14 inventory that they have provided, but we
15 respectfully urge this Court to order Mr. Ceglia
16 also to make available to us other computers and
17 electronic media in his possession, custody, or
18 control, because we have established a prima facie
19 case, indeed an overwhelming case, that he has --

20 THE COURT: Particularly including any
21 computers --

22 MR. SNYDER: Yes.

23 THE COURT: -- located at his parents'
24 home.

25 MR. SNYDER: Yes. Let me tell your Honor

1 one thing that is incredibly important. We have on
2 the Harvard server today a server that can be
3 authenticated as dated from 2003 and 4, emails to
4 and from Mr. Zuckerberg and Mr. Ceglia and
5 StreetFax. That server has none of the emails
6 obviously alleged in the complaint.

7 What's telling is that Mr. Ceglia in his
8 complaint makes no reference to the authentic
9 emails anywhere. Anywhere. Doesn't reference
10 them, and presumably he has -- we'll see whether
11 there are any on any of these electronic media,
12 what he's done with those. That will be very
13 interesting to see if he has evidence of the
14 original authentic emails, which, of course, tell a
15 story that's inconsistent with his story.

16 THE COURT: Okay. After we get done with
17 this phase, and we need to abide the reports of the
18 experts before we decide how to proceed further.

19 MR. SNYDER: Here's what we propose, your
20 Honor. Within a period of time -- we were going to
21 suggest ten days, but perhaps it should be 30 or
22 20, whatever the Court thinks is appropriate. Upon
23 the conclusion of the forensic testing we will
24 provide the Court with a report, a letter, an
25 affidavit setting forth our findings and informing

1 the Court of our intentions, whether at that point
2 we intend to move to dismiss on the grounds of
3 fraud pursuant to this Court's inherent power and
4 other authorities, which would empower the Court to
5 dismiss the case based on fraudulent documents
6 being at the heart of the case.

7 In the event that the forensic testing led us
8 to a conclusion which fell short of that, but was
9 not inconsistent with fraud, we then would propose
10 to the Court whether we needed additional
11 discovery, limited and targeted, and if so, what
12 kind. And if not, how the case would then proceed.

13 THE COURT: Which will be in the nature of
14 a proposed scheduling order?

15 MR. SNYDER: Yes, your Honor.

16 THE COURT: Thank you.

17 MR. SNYDER: In that case, it may well be,
18 not to get too nuanced, following up on your
19 Honor's comment, this case is woefully time barred.
20 This case is barred by laches. The partnership
21 claim fails to state a claim.

22 THE COURT: Did you plead that as an
23 affirmative defense?

24 MR. SNYDER: Yes, we did.

25 THE COURT: Okay.

1 MR. SNYDER: And the fact is that it may
2 well be that a second threshold question in this
3 case, and we've attempted to even put this in our
4 papers, would be the staleness of this case.
5 Because -- because this plaintiff waited well over
6 six years, close to seven years, to file this
7 lawsuit following the alleged breach. And his --
8 the alleged emails in the complaint, in addition to
9 being fraudulent, actually ironically are fatal to
10 his contract claim because they indicate that as
11 early as 2004 -- early 2004 according to his
12 fictional tail, Mr. Zuckerberg, according to his
13 story, rebuked him and told him he would have no
14 involvement in Facebook. Never happened. It's
15 fiction. But at that time his cause of action
16 would have ripened, and he filed a lawsuit six and
17 a half years later. Time barred. Stale, and so --

18 THE COURT: Well, is it?

19 MR. SNYDER: It may well-be --

20 THE COURT: I was doing that calculation
21 myself. In fact, we were looking at Massachusetts
22 wanted to make sure there wasn't a choice of law
23 here on statute of limitations, but it turns out
24 they're both six years.

25 MR. SNYDER: Correct, your Honor.

1 THE COURT: But I was measuring it from
2 the beginning of -- the latter part of the
3 July '04.

4 MR. SNYDER: There are a couple of
5 different times you can time it. It's either July
6 of '04. It's early -- I think it's March, or --

7 THE COURT: It looked to me like if there
8 was a repudiation or -- or a refusal to acknowledge
9 an ownership interest, it occurred not earlier than
10 the end of July.

11 MR. SNYDER: It did. It occurred in the
12 spring according to his story.

13 THE COURT: Oh, is that right?

14 MR. SNYDER: Yes, your Honor.

15 THE COURT: Funny I thought that it was in
16 July based on our reading of it. So it's time
17 barred. Six years.

18 MR. SNYDER: It's time barred.

19 THE COURT: Past six years.

20 MR. SNYDER: Yes. And there are other
21 facts and circumstances.

22 THE COURT: Well, we were curious about
23 the concept of this, whether there's adequate
24 pleading of a partnership, and then that gets into
25 whether there was a demand made by one partner upon

1 the other for some benefit from the partnership,
2 which we don't see was made, or at least not
3 pleaded, in which case then it's not ripe, and the
4 lawsuit, in that sense, is premature. But that's
5 really beside the point.

6 MR. SNYDER: The last time Mr. Zuckerberg
7 heard from Mr. Ceglia before he filed this
8 fraudulent lawsuit --

9 THE COURT: Yeah.

10 MR. SNYDER: -- was when Mr. Ceglia for
11 the last time --

12 THE COURT: Yeah.

13 MR. SNYDER: -- asked for forbearance on
14 the payments that were owed on StreetFax work.

15 THE COURT: Yeah.

16 MR. SNYDER: And that was some time in the
17 middle of 2004.

18 THE COURT: Not to be facetious, but we
19 were thinking well, if he didn't show up at
20 headquarters asking to measure the room for new
21 drapes, then the partnership breach didn't accrue.

22 MR. SNYDER: Yes, your Honor. But the
23 point of the partnership is the bogus emails are
24 fundamental to that partnership claim, which is why
25 we need discovery.

1 THE COURT: And what was the form of
2 Mr. Zuckerberg's rebuke that gives us an accrual
3 date that's beyond six years?

4 MR. SNYDER: Well, allegedly --

5 THE COURT: I can't recall.

6 MR. SNYDER: -- according to his
7 narrative, allegedly --

8 THE COURT: Yeah.

9 MR. SNYDER: -- he was being denied his
10 partnership entitlements well before July of 2004
11 according to his narrative.

12 THE COURT: Okay.

13 MR. SNYDER: In addition, there are other
14 facts and circumstances which, if the Court does
15 not mind, I would like not to talk about now in
16 terms of statute of limitations, because I am
17 concerned about this plaintiff.

18 THE COURT: No. No. What I was getting
19 at about that was whether or not we could dispose
20 of the case on a statute of limitations motion, or
21 failure to state a claim, instead of going through
22 all this scientific testing. But it sounds like
23 that's probably what we should do, so --

24 MR. SNYDER: It may well be that -- what
25 I'm saying, your Honor, is that it may be that in

1 the event that the scientific testing cannot
2 definitively establish the fraud --

3 THE COURT: We'll have to cross those
4 bridges --

5 MR. SNYDER: -- we may then immediately
6 cross that bridge.

7 THE COURT: Right. Thank you.

8 MR. SNYDER: Thank you.

9 THE COURT: All right. Quick rebuttal.
10 Surrebuttal.

11 MR. LAKE: Yes, please. First of all --

12 THE COURT: Because I need to make a
13 ruling. I think I'm ready.

14 MR. LAKE: But --

15 MR. SNYDER: I didn't address the MZ
16 though.

17 THE COURT: The who?

18 MR. SNYDER: The initials.

19 THE COURT: Yes. Thank you. You know, as
20 you were turning, I said oops, what about the
21 initials. Sorry, Mr. Lake.

22 MR. LAKE: That's okay.

23 MR. SNYDER: Thank you.

24 THE COURT: Why not give him that limited
25 discovery mutually speaking?

1 MR. SNYDER: Your Honor, he has not
2 established --

3 THE COURT: After all, he came all the way
4 from San Diego on a moment's --

5 MR. SNYDER: You know, we're giving him
6 the 176 emails. And as it relates to the initials,
7 it's our position that he has utterly failed to
8 establish a prima facie need -- evidence for a need
9 for that. We don't think it's probative, because
10 it's two capital letters on a page. Two capital
11 letters on a page.

12 THE COURT: Are you going to have any
13 handwriting experts look at this?

14 MR. SNYDER: No, your Honor.

15 THE COURT: Are you going to have any
16 handwriting experts look at it Mr. -- you already
17 have, haven't you, Mr. Lake?

18 MR. LAKE: Yes.

19 THE COURT: Well, are you representing to
20 us that -- that those experts have said we would
21 like to see some originals --

22 MR. LAKE: Yes.

23 THE COURT: -- on the handwriting issue?

24 MR. LAKE: That was put in the motion.
25 Absolutely.

1 THE COURT: I suppose your point is that
2 it can't -- the two concepts can't be consistent.
3 One expert can't say --

4 MR. SNYDER: It's two letters, your Honor.

5 THE COURT: -- that -- that this is --
6 well, if the paper is post '03, '04, then another
7 expert can't come along and say oh, but that's his
8 initial.

9 MR. SNYDER: Your Honor, it's two letters.

10 THE COURT: Right? Well, I'm just saying
11 hypothetically.

12 MR. SNYDER: Hypothetically this plaintiff
13 could have --

14 THE COURT: Can't -- those two things
15 can't --

16 MR. SNYDER: This plaintiff -- there are a
17 number of possibilities. For example, on the
18 authentic page 1, which we don't have before this
19 Court.

20 THE COURT: But you will.

21 MR. SNYDER: The authentic page 1 may be
22 gone forever, your Honor. The authentic --

23 THE COURT: The first one is a fraud. The
24 second -- I see your point.

25 MR. SNYDER: The real page 1 that existed

1 in the real world that related only to StreetFax.

2 THE COURT: The one that Zuckerberg had
3 but mislaid, and the one that the plaintiff
4 presumably had either purposely mislaid or --

5 MR. SNYDER: Yes, your Honor.

6 THE COURT: -- or destroyed.

7 MR. SNYDER: Right.

8 THE COURT: -- or has and refuses to
9 disclose.

10 MR. SNYDER: We don't know whether that
11 original document contained Mark Zuckerberg's
12 initials MZ. It could have. We don't know whether
13 the plaintiff forged Mark Zuckerberg's MZ. We
14 don't know whether he took Mark Zuckerberg's MZ
15 from the original page 1 and plastered on to the
16 bogus page 1 that's in front of this Court.

17 What we do know beyond any doubt in the world
18 is that page 1 as it existed in the real physical
19 world never bore the word Facebook, related to
20 Facebook, because it didn't exist at the time. It
21 wasn't even a figment of Mr. Zuckerberg's
22 imagination, and that's where Mr. Ceglia --

23 THE COURT: Tripped up.

24 MR. SNYDER: -- tripped up really badly.
25 Because there's no question about that. That --

1 that when Mark Zuckerberg was a freshman at Harvard
2 doing limited work for StreetFax and being just a
3 regular student that he wasn't even dreaming about,
4 thinking about, imagining something called
5 Facebook.

6 THE COURT: Thank you.

7 MR. SNYDER: Thank you.

8 MR. LAKE: Couple points, your Honor.

9 Listening to defendant's argument there, we might
10 as well just quit, because they're so certain that
11 this case is over, there's no point in moving
12 forward. And I have to tell you we respectfully
13 disagree. We believe that this case has merit, and
14 we intend to prove that to this Court.

15 THE COURT: Yes. Why the hesitancy over
16 access and testing of the hardware -- I'll call it
17 that -- for the electronic evidence versus the
18 document evidence?

19 MR. LAKE: A couple things. One,
20 Mr. Zuckerberg and his team are the best in the
21 world at manipulating computer data.

22 THE COURT: They're not going to be able
23 to manipulate the computer that's sitting in his
24 parents' home.

25 MR. LAKE: Sure they can.

1 THE COURT: Really?

2 MR. LAKE: Sure. They can -- they can
3 manipulate data however they want. I have no doubt
4 of that in my mind.

5 THE COURT: They can somehow creep through
6 the telephone lines into his mom's computer, get it
7 lit up, and start fooling around with the hard
8 drive?

9 MR. LAKE: Sure.

10 THE COURT: Really?

11 MR. LAKE: I believe that there's no limit
12 to what they can do to manipulate electronic data,
13 which is exactly why they are focusing completely
14 on their computers --

15 THE COURT: Even if the computer wasn't
16 connected to the Internet?

17 MR. LAKE: They can take all the
18 information off the data and trade a digital image
19 of it --

20 THE COURT: No. No. I understand the
21 science theory behind what you just said, but if
22 that computer physically isn't connected, if they
23 don't have an Internet account, say, and he's just
24 in there doing his thing on floppy discs or hard
25 drive, how do they get in there? Do they send

1 secret agents in there to take it out and bring it
2 over to the lab and fool around with it?

3 MR. LAKE: If I give them a floppy disc
4 and they take it --

5 THE COURT: Like Mission Impossible or
6 something like that?

7 MR. LAKE: -- who knows what it's going to
8 be when it comes back. That's why --

9 THE COURT: No. No. I understand that.
10 I'm just trying to understand your theory about
11 getting into the computer with the knowledge of a
12 computer owner presupposes being physically
13 connected to, you know, somebody's cable television
14 system with Internet service.

15 MR. LAKE: Right. Hacking into somebody's
16 email has to be done online for all I understand.
17 But that's why the ESI protocols were so important
18 when it comes to the preservation and discovery of
19 electronic data. It is a big, big deal. And the
20 idea of -- first of all, their request is so broad,
21 like we said before, it takes no consideration for
22 relevance. It takes no consideration for
23 privilege.

24 THE COURT: But the logic of your position
25 as you just stated it is that I have to presuppose

1 that conceivably already happened, and therefore
2 we're playing into their hands by giving them
3 access to the computer, and then they say, viola,
4 look what we found, knowing that they implanted it
5 themselves.

6 MR. LAKE: They could have. I don't know.
7 I hope not. Here's my concern.

8 THE COURT: Well, if they've already done
9 it, then the damage is done, so we might as well
10 find out about it --

11 MR. LAKE: Well, that's why they want it.

12 THE COURT: -- so your client can say
13 look, oh, my god, I didn't put this in there. They
14 must have.

15 MR. LAKE: Right. So if the damage is
16 done and the emails have already been manipulated,
17 then we go back to your original argument is, we
18 have to rely on the contract. Our contract needs
19 to be tested first. They say no, we don't want to
20 talk about the contract, because the contract might
21 be good, and we're still going to dismiss this case
22 because the emails are bad.

23 THE COURT: That's what I finally got Mr.
24 Snyder to agree that that was a possibility.

25 MR. LAKE: Right. They're ignoring the

1 contract. They don't care what the contract says.
2 They don't believe it. They don't care. What they
3 care about is electronic data --

4 THE COURT: But look, what's the harm in
5 it? I mean, if everything is above board here,
6 then let them take a look. They won't find
7 anything that's damaging.

8 MR. LAKE: And that's exactly right. I
9 think Mr. Snyder misspoke --

10 THE COURT: Well, it is exactly right.

11 MR. LAKE: -- earlier.

12 THE COURT: That's the point that
13 Mr. Snyder's making.

14 MR. LAKE: When he said we are not willing
15 to produce the information they requested, that's
16 not true. We in this case are absolutely willing
17 and bound to produce all relevant non-privileged
18 information, and we will do that under the proper
19 protocol and proper sequence.

20 THE COURT: Well, it's just a matter of
21 timing I think. If we're going to work on the
22 contract, why not work on the computers as well?

23 MR. LAKE: Right. And that's fine, if we
24 can do it mutually. Right now this is a one-way
25 street. They're demanding all of this from us, and

1 they're not willing to give us anything.

2 THE COURT: Well, they are. They said
3 they would give you access to the Harvard emails.

4 MR. LAKE: Just the ones between Ceglia
5 and Zuckerberg. If they want to have our entire
6 universe of computer data, then we should have the
7 exact same access to theirs.

8 THE COURT: But if the document is
9 unauthentic, it's unnecessary to look at those
10 corroborating -- I'll use that term loosely.

11 MR. LAKE: And the same thing is true for
12 them.

13 THE COURT: Well, I think -- not quite,
14 because as I attempted to carefully question
15 Mr. Snyder on which was, what is the relevance of
16 getting your hands on potential fraudulent
17 concocted sub downstream emails, and the answer is
18 I think, even though he doesn't want to say
19 anything that -- let anything pass his lips that
20 sounds like he's conceding a point here, as a good
21 lawyer should -- he is saying well, it's -- even if
22 the contract is good, his fraud on the court based
23 on these emails is enough to dismiss the case.
24 That's essentially why I asked the question,
25 otherwise I agree with you.

1 MR. LAKE: That's his theory.

2 THE COURT: Well, it's not a bad one. I'm
3 asking for a refutation of it, and I don't hear
4 one.

5 MR. LAKE: No. I will.

6 THE COURT: Let's hear it.

7 MR. LAKE: First of all, it's the
8 fundamental fairness.

9 THE COURT: It's getting close to dinner
10 time.

11 MR. LAKE: I know.

12 THE COURT: And your --

13 MR. LAKE: Respectfully, your Honor --

14 THE COURT: And you gentlemen I think are
15 going to be doing some homework tonight and
16 tomorrow morning to favor me with a protocol that I
17 can sign off and an order which will cover the
18 points that I'm going to announce a decision on
19 momentarily.

20 MR. LAKE: If I understand their request,
21 it is they want everything that we could possibly
22 have with unfettered access I think is the term
23 that they requested to any potential computer hard
24 drive, anything now without any discussion about
25 relevance or privilege. And we have to trust them

1 not to burn us with that.

2 THE COURT: Well, that's a valid point. I
3 mean, what do we -- I don't know the answer to
4 that, but presumably there's something that we can
5 put into a protocol that -- I don't know how we --
6 we need somebody to screen what's coming up on the
7 hard drive to spot anything that's potentially
8 privileged, and then immediately agree right then
9 and there to delete it or set it aside or strike it
10 or put some parentheses around it somehow.

11 MR. SNYDER: We do propose to the Court,
12 your Honor, in our McGowan paragraph 17 in terms of
13 a protocol to protect private or privileged emails,
14 there's an established protocol that is widely
15 accepted in the field which we would -- which we
16 would follow where Stroz Friedberg tenders to
17 counsel or the owner of the computer --

18 THE COURT: What page is that, sir?

19 MR. SNYDER: Your Honor, it's the next to
20 last page. I don't think it's paginated. It's
21 paragraph 17.

22 MR. LAKE: You're right. That protocol is
23 give us -- give our expert your stuff and trust us
24 that our expert won't tell us things that we're not
25 supposed to know. I think that's what the protocol

1 says.

2 THE COURT: Well, I think the protocol
3 that I would approve would allow you to be there
4 and observe the printout of the -- of the hard
5 drive so that privilege documents can be arguably
6 identified and deleted or exempted from the
7 expert's scrutiny.

8 MR. LAKE: Your Honor, I drafted a very
9 comprehensive protocol for this that nobody's seen
10 yet because I've just did it this morning.

11 THE COURT: They're about to see it.

12 MR. LAKE: Okay.

13 THE COURT: Trust me. And the only issue
14 is why shouldn't I authorize the testing, if you
15 will, of the electronic evidence as I refer to it?

16 MR. LAKE: Because this case is like any
17 other case, and that is we need to limit the scope
18 of the evidence that's going to be presented for
19 the relevant issues. Right now we're talking about
20 one issue, and that's authenticity of a contract.
21 There's been no propounding of discovery. We
22 haven't gotten any of their emails. They haven't
23 seen all of ours. They're jumping ahead of the --

24 THE COURT: But this testing process could
25 be dispositive, and it could be dispositive of both

1 based just on the contract, and if not the
2 contract, then based on the fraudulent emails.

3 MR. LAKE: But you know what else could be
4 dispositive?

5 THE COURT: What?

6 MR. LAKE: The email that Mark Zuckerberg
7 wrote to his girlfriend that says -- in 2003 that
8 says Paul Ceglia is a dummy and he should have
9 never entered into this contract, because I'm going
10 to steal his platform, which, by the way, what
11 happens if that exists? How do we know unless we
12 get an opportunity to look at the same thing that
13 they're asking for from us?

14 THE COURT: Let's take it a step at a
15 time.

16 MR. LAKE: Okay. Which is exactly what I
17 want to do. And here's -- one question you asked
18 earlier is why didn't they ask for the contract
19 earlier? And in fact last July Terry Connors, when
20 he was plaintiff for Paul Ceglia, offered it to
21 them and offered it to them to do whatever
22 destructive testing they wanted, and they elected
23 not to.

24 THE COURT: Really?

25 MR. LAKE: Yes. And I will submit a

1 declaration under penalty of perjury from
2 Mr. Connors if you need it.

3 THE COURT: What's the inference I should
4 draw from that?

5 MR. LAKE: They're in such a huge rush now
6 for some reason, and a year -- well, not a year,
7 but I think it was in July.

8 THE COURT: But you're in agreement that
9 it would be useful to get it done.

10 MR. LAKE: Oh, absolutely. I want to get
11 it done, but I want to get it done right so it's
12 not prejudicial or unfair to me.

13 THE COURT: I want it done right too.
14 Thank you.

15 MR. LAKE: Second thing, and this is where
16 I think we're going with this. You asked them how
17 long it would take to finalize their testing, and
18 they said two days. Then you asked them -- and
19 this is for the contract itself. Then you asked
20 them how long it would take for their experts to
21 produce a report on those findings, and they said
22 ten to 30 days. They are now focusing on the
23 emails. We know why. That's where they think that
24 they're going to have the meat of their case.

25 We spent two hours talking about how it was

1 important to go through the physical document first
2 and when you came out with your tentative, they
3 freaked out, and this is what we spent the last
4 hour listening to.

5 THE COURT: I wouldn't go that far. He
6 maintained his equilibrium pretty well.

7 MR. LAKE: No, he does. He's an excellent
8 lawyer as you pointed out. According to their own
9 math, we're talking about a 12-to-30-day resolution
10 of the physical contract issue.

11 THE COURT: Well I'm impressed that it can
12 be done that quickly, to be honest with you.

13 MR. LAKE: Yeah.

14 THE COURT: I don't know. I mean, we
15 don't have a lot of experience with this type of
16 testing issue. As I said, I did have a criminal
17 case where we got into this. And I can't remember
18 how long it took, but it took a while. We had ink
19 testing and everything else.

20 MR. LAKE: So here's what I propose.

21 THE COURT: It's a criminal antitrust
22 case.

23 MR. LAKE: We have to fight --

24 THE COURT: Contempt criminal antitrust.

25 MR. LAKE: We have to fight about an ESI

1 protocol, no doubt about it, and it's got to be
2 fair, and it's got to be done right.

3 THE COURT: Yes. It's going to be done
4 right. No, no. Whatever direction I give will
5 definitely take your security interests into
6 account. I have no intention of just letting them
7 get their hands around this stuff without your
8 being able to be physically present, protected. I
9 mean, you want a Wackenhut officer to be present,
10 that's fine.

11 MR. LAKE: Also, they have --

12 THE COURT: At your expense.

13 MR. LAKE: Right. Thank you. They have
14 also provided no legal authority for one-sided
15 expedited discovery. There isn't any. What
16 they're trying to do is manipulate the law about
17 expedited discovery, which is permissible, we agree
18 with --

19 THE COURT: Well, I'm trying to find a
20 basis to give you what you asked for, but I'm
21 having difficulty other than the initialing -- we
22 went over this several times. Believe me, I'm not
23 in favor of unilateral discovery, and --

24 MR. LAKE: And here's where I'm at a
25 distinct disadvantage.

1 THE COURT: And I'm having difficulty
2 understanding how the other non-signature requests
3 conceivably are relevant to the science that's
4 going to be applied to the testing of both the
5 document and the electronic evidence. That's the
6 difficulty I'm having. I don't have any problem
7 with the idea that if it comes out ambiguously that
8 it's relevant, and your interesting hypothetical
9 about his emails to some female acquaintance --

10 MR. LAKE: Or male.

11 THE COURT: -- how he managed to finesse
12 Mr. Ceglia here would be pretty damaging and
13 devastating if you had dueling expert opinions.
14 There's no question about that. I don't think
15 anybody quarrels with that. But it's -- it's the
16 potential definitiveness of this testing now that's
17 hard to ignore.

18 MR. LAKE: Here's the problem with that,
19 and here's --

20 THE COURT: The problem with what?

21 MR. LAKE: Here's the problem I have.
22 One, I'm at a distinct disadvantage because I have
23 not reviewed the entire case file, so I don't know
24 a lot of information.

25 THE COURT: Such as?

1 MR. LAKE: Such as what emails and other
2 witnesses my predecessors have interviewed that are
3 going to corroborate the theory that Mr. Ceglia had
4 spoken with other witnesses about --

5 THE COURT: Inconsistent with his
6 position?

7 MR. LAKE: Correct. I do have though --

8 THE COURT: You can still get those.

9 MR. LAKE: I know. But I --

10 THE COURT: How would that affect the
11 testing?

12 MR. LAKE: No. We're talking about two
13 different things. I don't mind about testing all
14 the relevant emails that aren't privileged. And I
15 agree that under the right protocol, we should do
16 that, and we should do theirs.

17 Here's my fear. We know for a fact that
18 Mr. Zuckerberg and Facebook have hired people that
19 have been traversing this country, and they have
20 been interviewing potential witnesses in this case.
21 They have hired a lawyer in Florida to try to --

22 THE COURT: What's your point? This is a
23 \$25 billion lawsuit.

24 MR. LAKE: They're trying to start a
25 criminal investigation in Florida against our

1 client.

2 THE COURT: What's your point?

3 MR. LAKE: They are going to witnesses --

4 THE COURT: What's your point?

5 MR. LAKE: -- and bullying them --

6 THE COURT: What's your point?

7 MR. LAKE: If I give you an email that I
8 have from a potential witness, the same fear -- if
9 they give us an email -- say he's going to write a
10 bunch of corroborating ones, my fear is if I
11 divulge a witness that I know that corroborates our
12 story, they're going to go out and they're going to
13 get to that witness.

14 THE COURT: We're not asking you to
15 divulge any witnesses. We're asking you to produce
16 a contract and some electronic hardware and
17 software, hard drives, floppies.

18 MR. LAKE: Right. We're willing to
19 produce all the information on that, and then tell
20 us which ones that you think are not true, and then
21 do the research on that. And what we're saying
22 is --

23 THE COURT: No, no, no. We're trying to
24 figure out whether they're fraudulent or not.
25 That's a scientific exercise.

1 MR. LAKE: Right. But not every email
2 that Paul Ceglia has ever written in his life, only
3 the ones that are germane to the veracity and the
4 authenticity of this contract.

5 THE COURT: Well, I hardly doubt that
6 they're going to be looking at every email he ever
7 wrote in his life.

8 MR. LAKE: That's what they asked for.
9 They've asked for every computer in his possession,
10 custody, or control.

11 THE COURT: Well, they want to make sure
12 they don't miss anything.

13 MR. LAKE: Right.

14 THE COURT: But they're not going to
15 examine it unless it appears to be germane to the
16 issue at hand, i.e. whether or not there was a
17 relationship on the Facebook project.

18 MR. LAKE: No. They will examine every
19 single email and document and transaction and key
20 stroke that is contained there.

21 THE COURT: So we can cover that through
22 the protocol where your observer says oh,
23 year 2000, no; 2001, no; 2002 well, let's take a
24 look. And then individually pinpoint the ones
25 that, in your opinion, aren't germane, and if

1 there's a dispute, oh, well, I guess that's where I
2 come in. But hopefully we won't come into that,
3 because it will be pretty evident, sort of res ipso
4 loquitur as to which ones are and which ones aren't
5 within the reasonable purview of the expert's need
6 to make his or her examination.

7 MR. SNYDER: I apologize, your Honor. I
8 think Mr. Lake may not understand. The forensic
9 examination of the electronic evidence will be
10 accomplished both according to his forensic expert
11 and our forensic expert according to the
12 widely-accepted practice of making an image of
13 those assets. That image will then be brought to
14 our expert's laboratory --

15 THE COURT: Well, it's the image that he's
16 concerned about.

17 MR. SNYDER: -- to be tested.

18 THE COURT: He's saying you're going to
19 make an image of everything.

20 MR. SNYDER: And the protocol --

21 THE COURT: And your investigators are
22 then going to fan out with these leads and start
23 hammering people out there.

24 MR. SNYDER: Well, we have a sworn
25 affidavit, your Honor, from a nationally regarded

1 expert who has told this Court how their protocol
2 would protect against any examination of or
3 intrusion into private or privilege emails.

4 THE COURT: I don't know that it says it
5 that clearly. He says he has it, but -- I mean, I
6 have to accept his word for it, right?

7 MR. LAKE: Right. His protocol says that
8 the inspection sessions and remove to safe place
9 and in the presence of both parties. What he's
10 saying is their experts are going to monitor and
11 examine the entire universe in front of both
12 parties, and that's fundamentally unfair for two
13 reasons. Number one, it's going to include
14 irrelevant, possibly privileged information, and
15 two, it doesn't give us access to any discovery on
16 the information that they have.

17 THE COURT: I understand that. We went
18 through that already.

19 MR. LAKE: Right.

20 THE COURT: I'm focusing on the
21 possibility of your being -- exposing to them
22 irrelevant information that could be harmful in
23 some way or another that isn't pertinent to the --
24 to the expert's evaluation, that's what I'm
25 focusing on.

1 MR. LAKE: Thank you, your Honor.

2 THE COURT: And I'm not quarreling with
3 the fact that it's not crystal clear from
4 paragraph 17 of Mr. McGowan's declaration as to
5 just how this will be done. I have to accept on
6 faith that it will be done, and if you need to have
7 it spelled out, then that's what you're going to do
8 between now and tomorrow with counsel to lay out in
9 a protocol that we can stipulate to with or without
10 your -- hopefully with your approval, and if not,
11 over my signature.

12 MR. LAKE: Understood. Two things, one, I
13 think we're -- if we can do the protocol for the
14 original contract first, we're talking about a
15 30-day window, and that will give us 30 days to
16 develop the ESI protocol and start it immediately.
17 And I'm perfectly okay with that. But we need to
18 incorporate --

19 THE COURT: You have the document there.
20 It will take them 15 minutes to review it. I have
21 a hunch that they have an expert in the courtroom
22 with them that are available certainly by phone to
23 consult on it. I suspect by noon tomorrow there
24 ought to be a document tendered to the Court for
25 the Court's approval that will cover these issues.

1 MR. SNYDER: And, your Honor --

2 THE COURT: If I have to bring you back
3 tomorrow afternoon for some further discussion
4 about it, I will. But I'm trying to avoid that.

5 MR. SNYDER: Your Honor --

6 THE COURT: It's my day off.

7 MR. SNYDER: In the event --

8 THE COURT: I am semi-retired. Believe it
9 or don't.

10 MR. LAKE: Your Honor, like I said, you
11 can have me here any day, and I'll be here.

12 THE COURT: That's the spirit.

13 MR. LAKE: I'm still standing.

14 THE COURT: We need more lawyers like
15 that. That's great.

16 MR. LAKE: I just want to make sure we
17 address my second concern, and that is what's good
18 for the goose is good for the gander.

19 THE COURT: Well, that's the one that
20 bites. And I think I know what I have to do there.

21 MR. LAKE: Okay.

22 THE COURT: And enough said. Thank you.

23 MR. LAKE: Thank you very much.

24 THE COURT: Done a good job. Tell your
25 client I said so. All right.

1 Here's the parameters of the Court's ruling.
2 We're going to grant the motion in part in this
3 sense. We're granting the motion as to both the
4 document and the electronic discovery or evidence,
5 excuse me. We're going to require the plaintiff to
6 provide within a time stated by the defendant all
7 of these electronic evidence items, the computers,
8 the floppy discs, the CDs, the original document,
9 of course, within a stated period. I don't know,
10 what's your -- what's your request there Mr. --

11 MR. SNYDER: We had said, your Honor,
12 July 8th.

13 THE COURT: July 8th. Fine. And we're
14 going to permit -- we're going to require the
15 parties to meet and confer and attempt to stipulate
16 to a protocol that will permit the examination of
17 these materials for scientific testing as to their
18 authenticity in accordance with the protocol, which
19 will secure the physical integrity of the tendered
20 items, including the personal delivery of the
21 materials by the plaintiff, attendance by the
22 plaintiff or a representative, including security
23 officers, during the testing process. A review of
24 the hard drives to attempt to filter out any
25 potentially privileged or other irrelevant

1 material. This will occur -- I don't know --
2 within what period of time after the items are
3 delivered?

4 MR. SNYDER: The testing of the --

5 THE COURT: Yes.

6 MR. SNYDER: -- of all materials, your
7 Honor?

8 THE COURT: Yes. Not later than --

9 MR. SNYDER: Within 30 days, your Honor.

10 THE COURT: All right. Not later than
11 August 8th. Thereafter, the defendant will provide
12 a report to the Court as to the result of the
13 testing by the various experts. And following
14 such, the parties may contact the Court to schedule
15 a Rule 16(b) conference to schedule further
16 proceedings, including appropriate motions.

17 MR. SNYDER: Your Honor, that -- thank
18 you, your Honor.

19 THE COURT: Those are the parameters. I
20 would appreciate defendant tendering an order to
21 the Court detailing these -- these findings -- or
22 these conclusions, these directions by tomorrow
23 morning at 10 o'clock.

24 MR. SNYDER: Yes, your Honor.

25 THE COURT: Give Mr. Lake a chance to

1 review them. If he has any objections, he can let
2 the Court know and tender a written statement, and
3 we'll review it before we sign the order and file
4 it.

5 MR. SNYDER: Thank you, your Honor. One
6 point of clarification, we will meet with Mr. Lake
7 and confer pursuant to your Honor's order
8 earnestly.

9 THE COURT: Both on the language of the
10 order as well as the --

11 MR. SNYDER: Yes.

12 THE COURT: -- protocol that we discussed.

13 MR. SNYDER: Yes. And in the event,
14 however, and I don't want to jinx it, because hope
15 springs eternal. In the event that we cannot --

16 THE COURT: You can be seated. I don't
17 want you to throw out a disc there. We don't
18 want --

19 MR. SNYDER: -- obtain consent of Mr. Lake
20 to a protocol, and we will try mightily to come to
21 an agreement --

22 THE COURT: In this case submit dueling
23 protocols, and if I need to call you over here
24 tomorrow to discuss it in chambers, we will. But
25 by the end of the day I will sign a protocol.

1 MR. SNYDER: Thank you, your Honor.

2 MR. LAKE: Your Honor, I have a couple
3 questions, because I'm unclear. First --

4 THE COURT: Excuse me. One last thing. I
5 apologize. Thank you. Thank you, Mr. Lake. And
6 as to the mutual discovery -- that's why I said
7 granted in part. We are going to direct that the
8 plaintiff receive no less than 30 handwriting
9 samples of Mr. Zuckerberg, including samples of his
10 initials written or -- written or -- I guess that's
11 the right word, written.

12 MR. LAKE: Originals?

13 THE COURT: Samples.

14 MR. LAKE: Right, not photocopied samples
15 but original wet ink.

16 THE COURT: Oh, is that what it should
17 say? It doesn't say that here.

18 MR. LAKE: Yeah.

19 THE COURT: It has to be originals?

20 MR. LAKE: It's the same point as the
21 original contract.

22 THE COURT: I know, but that's not what's
23 written here.

24 MR. LAKE: Okay. I'm sorry, your Honor.
25 Like I said, I got here today --

1 THE COURT: I know. You're doing great.

2 MR. LAKE: I'm asking you for a wet --

3 THE COURT: I'm not -- you just tell me
4 what it is.

5 MR. SNYDER: So, your Honor, this was
6 eight years ago, so --

7 THE COURT: I know. If you don't have
8 it -- I mean, it sounds to me like somebody thought
9 that there were -- I don't remember anybody saying
10 that there weren't 30 samples available. That's
11 why I'm -- I'm not trying to be picky here, but
12 nobody -- defendant hasn't said that they're not
13 available.

14 UNIDENTIFIED VOICE: (Indiscernible).

15 THE COURT: All right. So we didn't focus
16 on the issue of 30. So what's a reasonable --

17 MR. LAKE: That's a reasonable number.
18 It's the timing. Here's what I wanted to talk
19 about.

20 THE COURT: If I say no less, that
21 presupposes there are at least 30. I guess not
22 having heard that there wouldn't be --

23 MR. LAKE: Right. So the question is how
24 long is it going to take them to gather 30
25 signatures and 30 initials, and if they can't do it

1 by the 8th --

2 THE COURT: Well, we may have to put a
3 separate timeframe on this. I'm just trying to
4 point out why I'm ruling in limited part in your
5 favor. I'm trying to give you some mutual
6 discovery.

7 MR. LAKE: Thank you.

8 THE COURT: I don't want to be accused of
9 being an unilateralist here.

10 UNIDENTIFIED VOICE: (indiscernible).

11 THE COURT: I would say that -- I would
12 say maybe now that you've told me that you can't --
13 nobody can at this point, but again it wasn't
14 addressed, and I should have addressed it, but I
15 didn't. A lot of other things. So, handwriting
16 samples, to the extent that the parties can agree
17 on a number, then I would like to see a number.
18 But I'm assuming there are some available.

19 Defendant will be directed to make a good-faith
20 effort to search his files and locate as many as
21 are available, not more than -- I mean, as many as
22 possible. I don't know, help me out here with a --

23 UNIDENTIFIED VOICE: Can we report back to
24 you by a date that we can conduct a good-faith
25 effort to identify (indiscernible).

1 THE COURT: Or however many you have. If
2 they're not there, and if we get an affidavit from
3 Mr. Zuckerberg that he's made this personal search,
4 which he would have to do either himself personally
5 or through some personal assistants, I don't know
6 how to deal with it except that I think that they
7 are entitled to it and in fairness would like some
8 effort to produce them.

9 MR. SNYDER: Yes, your Honor. Although,
10 obviously, you know our position that it's not
11 relevant to the fraud issue.

12 THE COURT: Well, you're welcome to take
13 an appeal to Judge Arcara. Fourteen days.

14 But I want to see some effort to produce these
15 handwriting samples. And I would like to see a
16 report back within a reasonable time. I don't know
17 what that would be. Probably -- it would seem to
18 me 10, 20 days?

19 MR. LAKE: Two weeks, your Honor.

20 THE COURT: Two weeks exactly, that's what
21 I was thinking. Either produce the sample -- well,
22 I would want an affidavit from Mr. Zuckerberg as to
23 his good faith efforts to locate such, and
24 including the originals. And if the originals are
25 somehow not available, then copies.

1 Now, my able law clerk who has extensive
2 experience in real estate pointed out that if he
3 has had any real estate transactions, particularly
4 such as buying a home --

5 MR. SNYDER: No, your Honor.

6 THE COURT: -- then there should be public
7 records including his initials on each and every
8 page of such things as a mortgage agreement.

9 UNIDENTIFIED VOICE: It's interesting,
10 Judge Arcara brought this up too.

11 THE COURT: Did he?

12 UNIDENTIFIED VOICE: (Indiscernible.)

13 THE COURT: I see. Okay. Well, that's
14 true. I mean, if he was a college freshman, he
15 probably wasn't likely to be owning a home yet.

16 MR. LAKE: Your Honor, though he did have
17 bank accounts, he did rent a home in Palo Alto.
18 There are a lot of things he could have signed.

19 THE COURT: I'm going with this date,
20 but -- these dates, but your experts have said
21 that -- and I know the defendants would object to
22 anything later than this, but are they saying in
23 effect that a person's handwriting materially
24 changes after a seven-year period and therefore
25 later samples are not useful?

1 MR. LAKE: I haven't spoken to them, I
2 don't know. I think it's because that was the
3 relevant time period that they had them.

4 THE COURT: Yeah.

5 MR. LAKE: I would say if they don't have
6 enough from that time period, that they could try
7 to produce them as close to that time period as
8 possible.

9 THE COURT: Not music to your ears.

10 MR. SNYDER: Your Honor, that's not what
11 they're asking for, and it's --

12 THE COURT: What do you mean?

13 MR. SNYDER: In other words, they're
14 saying that they want the samples from a specified
15 time period. Pursuant to your Honor's order, we'll
16 look for originals, and if they don't exist copies
17 for that relevant time period.

18 THE COURT: Yeah. I think for present
19 purposes we're stuck with this. I mean, that's
20 what they asked for. That's what I'm giving you.
21 That's what you asked for. That's what prior
22 counsel asked for. If there is a further request,
23 we'll have to debate about it.

24 MR. SNYDER: Yes, your Honor.

25 THE COURT: But for now, that's all I can

1 do. I'm not going to open up a whole new category
2 of argument here.

3 MR. SNYDER: Your Honor --

4 THE COURT: And so that's why it's in
5 part, and the order should include language that
6 carries forth on the idea of getting ahold of those
7 samples to the extent that they're available, and
8 there was a good-faith effort to locate same.

9 MR. LAKE: Your Honor, a couple more
10 things that I have questions.

11 THE COURT: Sure.

12 MR. LAKE: One, I think I heard him say
13 they are going to produce the 176 emails from the
14 Harvard server?

15 THE COURT: They did. And we want to
16 include that too, some language that will allow
17 Mr. Lake to get his hands on for his expert
18 examination the -- call them the Harvard emails.

19 MR. LAKE: Thank you, your Honor.

20 MR. SNYDER: Your Honor, we requested, in
21 light of our showing in the papers, that those
22 emails be produced in a sequenced fashion, and we
23 respectfully urge the Court to order a sequence
24 production. We have overwhelming proof that this
25 plaintiff has committed fraud in the past, and he's

1 committing fraud here, and to protect the integrity
2 of the process, there is no harm, no foul, and I
3 think it would be prudent under the circumstances
4 to permit sequenced discovery within the Court's
5 discretion to do so. He will get the emails.
6 He'll be able to examine them, but only after we
7 have his emails, so he can't monkey around anymore.

8 THE COURT: What's the harm in that?

9 MR. LAKE: Well, the harm -- the harm is
10 that we don't know when that is. Why don't we do
11 it simultaneously then?

12 THE COURT: What do you mean when that is?

13 MR. LAKE: You just asked us to provide
14 them -- and I have a question as to how to do
15 that -- everything within the universe that we
16 have. Why don't they give us their emails at the
17 exact same time?

18 THE COURT: Well, that's the issue.
19 That's the issue.

20 MR. LAKE: Right.

21 THE COURT: What's the harm in doing it
22 sequentially? You eventually get it.

23 MR. LAKE: To me it comes back to the same
24 issue, and that is once I read those emails, they
25 may lead me to other people that I can talk with.

1 And the fear that they have that Mr. Ceglia is
2 going to go out and conduct future fraud, which we
3 still submit he has not at all in this case, and
4 otherwise, it's irrelevant and I don't know about
5 it. We have the same issue with them tampering
6 with witnesses, and as soon as we learn who the
7 witnesses are --

8 THE COURT: Beside the point.

9 MR. LAKE: -- they can go out and --

10 THE COURT: It's beside the point. If you
11 have evidence of witness tampering, then you're
12 obliged to bring it to the attention of the Court
13 and seek sanctions. We'll turn it over to the U.S.
14 Attorney's office. The request is granted.

15 MR. SNYDER: Thank you, your Honor.

16 THE COURT: You can put that in the order
17 too.

18 MR. LAKE: So they will be provided upon
19 as to --

20 THE COURT: You'll get the Harvard emails
21 after you provide the electronic discovery that
22 will include all the emails that Mr. Ceglia has
23 identified.

24 MR. LAKE: Right. That would be within
25 the next day or so after that?

1 THE COURT: Well, yeah, I guess. Once
2 they're able to make an image, get the image of
3 the -- of the Ceglia emails, and, yeah, you'll turn
4 over the Harvard emails.

5 MR. SNYDER: Once -- your Honor, what I
6 would propose the order recite is that upon three
7 days, five days of our receipt of all the
8 electronic evidence and certification by the
9 plaintiff that he has done so --

10 THE COURT: All right.

11 MR. SNYDER: Pursuant to the penalty of
12 perjury.

13 THE COURT: Certification. Good point.

14 MR. SNYDER: We then in five days from
15 that will provide the Harvard emails.

16 THE COURT: That's fine.

17 MR. LAKE: So five days. Okay.

18 THE COURT: Five days after Mr. Ceglia
19 provides a certification and tenders the hardware
20 and the software as they are.

21 MR. SNYDER: Thank you, your Honor.

22 MR. LAKE: Here's -- now, your Honor --

23 THE COURT: Now, what was your
24 clarification?

25 MR. LAKE: I have a couple clarifications.

1 You want us to provide them with the electronic
2 information. How do you want us to do that? I
3 can't imagine just walking in to Gibson Dunn and
4 handing them a bunch of computers.

5 THE COURT: That's the protocol.

6 MR. SNYDER: It's as easy as pie, just for
7 your Honor's information. Stroz Friedberg and
8 their experts speak the exact same language.
9 They'll get on a plane or a train or bus, they'll
10 go to Illinois. They went to the same school.
11 They go to the same conferences. And they'll do
12 what they always do. They'll take the images.
13 There will be no controversy. There will be no
14 ranker. It's done every day, your Honor. It's
15 easy as pie, and we'll set it forth in our
16 protocol.

17 THE COURT: Famous last words.

18 MR. LAKE: Yeah.

19 THE COURT: But that's what we're here
20 for.

21 MR. LAKE: And here's another -- and he
22 raises the issue that I was going to next, and that
23 is by July 8th as --

24 THE COURT: If you want to try to tattoo
25 some language into the protocol in your discussions

1 this evening and tomorrow morning to address what
2 we're just talking about, feel free to try. I'm
3 happy to attempt to accommodate you. I don't want
4 you to feel that you're being oppressed here.

5 MR. LAKE: Okay. Thank you. Here's why.
6 I told you I would be anywhere you want me, and I
7 will. I'm going to have to go to Illinois
8 obviously to talk to my experts and get this
9 organized and get the information pursuant to their
10 protocol. That's going to take me -- you know, I'm
11 going to do that.

12 My son is playing in the Junior Olympics up in
13 Minneapolis. He's a volleyball player, and the
14 Junior Olympics are Sunday through Wednesday,
15 because they do it over the holiday weekend. He'll
16 be a senior this year, and he's being highly
17 recruited to play NCAA I ball. This is the first
18 time --

19 THE COURT: I'm assuming he takes after
20 his daddy as far as vertical --

21 MR. LAKE: Thank you. This is the first
22 time the college recruiters are allowed to speak
23 with him.

24 THE COURT: I understand.

25 MR. LAKE: I was hoping to go to

1 Minneapolis from Sunday through Wednesday. It's
2 going to be impossible for me --

3 THE COURT: Look, we're going to get this
4 done. This is a matter of timing --

5 MR. SNYDER: I would just say, your Honor,
6 I have -- I have children and obligations as well.
7 Paul Argentieri is lead counsel in this case, your
8 Honor. He's lead counsel. And he is more than
9 competent to take care of this. Mr. Lake can speak
10 on the phone. We speak to our experts almost
11 exclusively on the phone. There's nothing magic
12 about this. This is all done according to accepted
13 protocols. We're not coming in with ray guns and
14 SWAT teams. We're coming in pursuant to an
15 established widely accepted protocol that will use
16 to get the electronic assets and test them. It can
17 all be done on the phone, and frankly --

18 THE COURT: Mr. Argentieri is not able
19 to --

20 MR. LAKE: Mr. Argentieri is --

21 THE COURT: He's got to come back anyway
22 and get into the vault, or get into the safe
23 deposit box here.

24 MR. LAKE: Right. So we still have that
25 problem, and that's a logistical problem that I'm

1 not sure I can accommodate by the 8th.

2 THE COURT: Oh, yes, you will.

3 MR. LAKE: Okay. I'll notify -- what I
4 was saying is, if he's coming back on the 11th or
5 12th -- if he's flying back on the 11th, he'll be
6 here the 12th. I was hoping to spend three days
7 watching my son and talking to colleges.

8 THE COURT: Well, there's no reason why
9 you can't. I think what the point of counsel is
10 that you've got two lawyers working on this case.
11 You're doing great on your own. Mr. Argentieri is
12 available, and we need to -- we need to move
13 forward.

14 MR. LAKE: My --

15 THE COURT: Make sure you get up to see
16 your son. Just hand it off to Mr. Argentieri.

17 MR. LAKE: Well, your Honor, as you know
18 from my declaration I submitted for my motion for
19 continuance today, Mr. Ceglia is in earnest
20 negotiations with several prominent national firms.
21 I don't know what the -- you know, what that is
22 producing today, because I'm here.

23 THE COURT: I hope by the time we're done
24 we haven't run the entirety of the Martindale
25 Hubbell directory here, but --

1 MR. LAKE: Well, they're half way through
2 if they got to Lake.

3 THE COURT: Just as long as Mr. Flynn is
4 kept fully employed.

5 MR. LAKE: Right. My request would be
6 this, and it's -- I'm not asking for much time at
7 all, because I just think the 8th is tight. I
8 think that if we move it one week, it's reasonable.
9 It will have everyone here. We'll be ready. We
10 can do this right. It's not that we don't want to
11 do it.

12 THE COURT: Will a week make a difference
13 from the defendant's point of view?

14 MR. LAKE: I don't know how it could
15 possibly make a difference. They could have done
16 this a year ago. Sorry, your Honor.

17 MR. SNYDER: Your Honor --

18 THE COURT: I think the answer is we can
19 give them another week, it looks like.

20 MR. SNYDER: I mean, as a matter of human
21 courtesy and human decency --

22 THE COURT: Well, this is the Western
23 District of New York.

24 MR. SNYDER: Your Honor, the problem here
25 is Mr. Argentieri, who's lead counsel, who doesn't

1 seem to want to come to court, doesn't seem to want
2 to sign federal pleadings, yet has the contract in
3 his vault, somehow is not responsible for the
4 conduct of this case. And we are subjected, a
5 company that employs thousands of people, has
6 investors across the world, to a fraudulent
7 lawsuit, your Honor, and under those
8 circumstances --

9 THE COURT: Well, you could have asked for
10 it sooner.

11 MR. SNYDER: Under those circumstances we
12 believe the 8th is appropriate, and that this is a
13 delay tactic, frankly, because you can pick up the
14 phone, Mr. Lake, and call your experts, and there
15 is no magic to what has to happen. There's no
16 dancing elves that need to be hired to effectuate
17 the transfer the data. It's done every day in
18 America.

19 THE COURT: You want to go to what date?

20 MR. LAKE: The 15th. Your Honor, just to
21 address that point, I haven't even met my experts
22 yet. I have not talked to them once, so -- and it
23 is the 4th of July weekend for them. They are not
24 here today. I don't think it's unreasonable to ask
25 for the 15th.

1 THE COURT: The 15th.

2 MR. LAKE: Thank you, your Honor.

3 THE COURT: Anything else?

4 MR. SNYDER: No, your Honor.

5 THE COURT: Mr. Lake?

6 MR. LAKE: No. I guess we'll talk

7 about --

8 THE COURT: I'll be looking forward to the
9 order and the protocol.

10 MR. SNYDER: Yes, your Honor.

11 THE COURT: Ten o'clock tomorrow morning.

12 MR. SNYDER: Yes, your Honor.

13 THE COURT: And I will come in if
14 necessary to resolve any disputes, but if they
15 are -- if it's indicated to my able assistant that
16 they're ready for signature, I'll come in and sign
17 them.

18 MR. SNYDER: Thank you, Judge.

19 THE COURT: If there's an issue, then
20 we'll have you appear, and we'll discuss it in
21 chambers or on the record to the extent necessary.

22 MR. LAKE: So we're ordered back here at
23 10 o'clock tomorrow morning to meet and confer, is
24 that what I just heard?

25 THE COURT: No. You are meeting and

1 conferring as soon as you leave the courtroom. You
2 can stay here and meet and confer. I will ask the
3 public to adjourn, if you will, so that the room
4 can become a conference room rather than a
5 courtroom. Or you can go to wherever you want to
6 go to, either over dinner or to Mr. -- I don't
7 know, to Mr. Flynn's place. He can get his jitney
8 service up here and take you over there in the
9 Larkin express and continue your conversations
10 there, have food brought in, or walk over to
11 Chef's.

12 MR. SNYDER: Somewhere with a speakerphone
13 would be helpful.

14 THE COURT: Speakerphone. Well, there you
15 go. That might be a little difficult for us here.
16 It sounds like you're going to go over to Mr.
17 Flynn's place.

18 MR. SNYDER: Do you have a speakerphone in
19 your conference room?

20 THE COURT: Of course. Wait until you see
21 this place. It's amazing. No, I don't mean his
22 office. I mean the building that it's in. The
23 Larkin building. Do you know what that is, the
24 Larkin Company of the turn of the century? They
25 brought in product in on railroad cars on one end

1 of the building, and at the other end it came out
2 in boxes for shipment like mail order. Household
3 goods of every kind imaginable all over the
4 country. And now it's -- it was at one point an
5 abandoned warehouse, and then Mr. Zemski took over
6 and just had a birthday party with a cake shaped
7 like the Larkin building. This is a very famous
8 structure in American history actually. They have
9 a big plaque explains it all. And Mr. Flynn can
10 explain it. You'll really get -- it will be a real
11 education for you.

12 So, get at it, and I'll be here at ten to sign,
13 and if I have to talk to you individually and we
14 have to tweak it because you can't agree on
15 something that's major, that's what I'll do.

16 MR. SNYDER: Your Honor, just to inform
17 the Court I'm going -- I have to be in New York,
18 but I have colleagues here, and they will be
19 dealing with Mr. Lake, and I'll be available.

20 THE COURT: Why do you have to go to New
21 York?

22 MR. SNYDER: Personal matter.

23 THE COURT: Oh.

24 MR. SNYDER: Thank you, your Honor.

25 THE COURT: Okay. So your other

1 colleagues are going to be able to hammer this
2 thing down?

3 MR. SNYDER: For sure. And I will as
4 well, your Honor. Just not physically present.

5 THE COURT: Oh, you're going to skip
6 dinner at Chefs, is that my understanding?

7 MR. SNYDER: Yes, your Honor.

8 THE COURT: What? Wait a minute. I ought
9 to reconsider this ruling here. All right.

10 Anything further? There being none, I'll see
11 the papers that I requested tomorrow morning.
12 We're adjourned.

13 MR. SNYDER: Thank you, your Honor.

14 MR. LAKE: Thank you, your Honor.

15 * * * * *

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a
correct transcription, to the best of my
ability, from the electronic sound recording
of the proceedings in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Official Reporter
U.S.D.C., W.D.N.Y.